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K. ŌGAWA. COLLOTYPE.

THE GRAVE OF KYU-SŌ, ŌTSUKA MURA, TŌKYŌ.

Curtis.

A JAPANESE PHILOSOPHER.

By George Wm. Knox, D.D.

[*Read January 20, 1892.*]

INTRODUCTION.

Previous to the recent introduction of western literature and science, the intellectual development of the Japanese may be studied in three periods, each characterized by a distinctive system of religion and ethics.

The first period came to an end in the eighth century of our era. It was the period of Shintō and of pure native thought. It has been fully treated in the Transactions of this society.[1]

The second period began with the introduction of Buddhism and, with it, of the Chinese civilization in the sixth and seventh centuries A.D. Thenceforth for a thousand years the new religion was supreme. "All education was for centuries in Buddhist hands, Buddhism introduced art, introduced medicine, moulded the folk-lore of the country, created its dramatic poetry, deeply influenced its politics and every sphere of social and intellectual activity."[2] Religiously its highest distinctively Japanese development was in the

[1] "The Kō-ji-ki," translated by B. H. Chamberlain, Vol. X. Appendix; "The Revival of Pure Shin-tau," by Ernest Satow, Vol. III. Appendix; "Ancient Japanese Rituals," by the same, Vols. VII, IX; also "The Classical Poetry of the Japanese" by B. H. Chamberlain.

[2] "Things Japanese," by B. H. Chamberlain, p. 71, 2nd Ed.

thirteenth century, when the Nichiren and Shin sects were founded. Its impress is deep upon the literary masterpieces of the eleventh and twelfth centuries.[3]

The third period began with the establishment of peace under Tokugawa Ieyasu and continued until the period of Meiji in which we live. It is the period of the Chinese philosophy as interpreted by the great scholars of the Sō (Sung) dynasty in China.

These periods intermingle and overlap. Repeated instances of Chinese influence are detected even in the earliest remains of pure Japanese literature; in the second period the influence of the earlier remained and the force of the Confucian teaching was strongly felt. And in the third period not only did the influences of the three intermingle, but they came to philosophical and religious self-consciousness and conflict.

The Confucian ethics came to Japan early in the Christian era, just how early is uncertain. The wide influence of Chinese thought and civilization date from the introduction of Buddhism; but the distinctive triumph of the Chinese philosophy was in the seventeenth century of our era. In Japan as in China the prevalent philosophy must be distinguished from the traditional and dogmatic ethics.

PHILOSOPHY AND ETHICS.

This distinction often has been overlooked and the philosophy has been identified with the teachings of the Sages. Then, as a second step, these teachings are described as "an attempt to isolate the purely human side of morals,"[4] finding its sole origin "in the conviction that human moral life has its basis and its safeguards in human nature."[4] The words of Confucius and Mencius appear to be "a set of moral truths—some would

[3] James Troup's translations of the Shin teaching, Vols. XIV, XVII of these Transactions.

[4] "The International Journal of Ethics," Vol. 1, No. 3, p. 307.

say truisms—of a very narrow scope and of dry ceremonial observances, political rather than personal."[5] However true this characterization of the early Chinese teachings may be, one dissents when it is set forth, finally, as "the creed of educated Chinamen";[4] nor, so far as my limited study goes, can I find that it has satisfied "the Far-Easterns of China, Korea and Japan."

It is not necessary to linger over the efforts to prove the original monotheism of the Chinese nor to recount the religious elements in the teaching of Confucius.[6] After his death there was a rapid "degeneracy," for his "set of moral rules" left an open door for other doctrine. In the time of Mencius scholars openly ridiculed the "Master," and in spite of Mencius's opposition Taoism gained in strength. Later on for centuries Taoism had "the field pretty much to itself;"[7] until at a subsequent date this mystical system received "Buddhism with open arms."[8]

As early as 65 A. D. the Imperial sanction was given to the Indian religion, and thenceforth for centuries men were zealous for both Confucius and Buddha.[9] So in the time of the Eastern Tsin "Buddhism was the chief religion, . . . and the doctrines of Confucius were much esteemed;"[10] and

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[5] "Things Japanese," 2nd Edition, p. 92.

[6] See "The Religions of China," Lecture I; and Faber's "A Systematical Digest of the Doctrines of Confucius," pp. 44–53.

[7] "The Religions of China," p. 180.

[8] "The China Review" Vol. VIII, No. 1, p. 59.

[9] Dr. Edkins ("The Phœnix" Vol. III, pp. 47–49) divides the intellectual development of China into five stages;–1, Struggles for Confucianism against various speculations, with Taoist doctrine gaining yearly; 2, The "Han", when the tone of speculation was predominantly Taoist; 3, The six dynasties, when Buddhism was triumphant; 4, The "Tang," luxurious and poetical; 5, The "Sung," and on to our day. In none of these periods was "the purely human side of morals" the "creed of educated Chinamen." Some addition was always needed to satisfy their intellectual and religious natures.

[10] The Middle Kingdom, Vol. II, p. 165.

again we read of the emperor Wuti of the Liang in the sixth century: "Wuti did much to restore literature and the study of Confucius; . . . In his latter days he was so great a devotee of Buddhism that he retired to a monastery like Charles V."[11] This harmony continued with little to disturb it until the time of the Sō (Sung).

It was during this period of Buddhist supremacy that the Chinese literature was brought to Japan, and here too it was honoured but made no effort to disentangle itself from its ally; the Buddhist religion, and not the Confucian ethics, bring characteristic of the period.

When, however, under Tokugawa rule, Chinese thought a second time made conquest of Japan, it was no longer friendly to Buddhism. While Japan had slept its long sleep of centuries (from the twelfth to the seventeenth) China had been awake. At last Confucianism had taken on the form of a developed philosophy and with its new self-consciousness had attacked and routed its quondam friend. This new philosophy has satisfied the intellect of China and introduced into Japan won its way here also at once. The ages of Buddhistic faith came to a close and the intellect of Japan accepted in the place of the Indian religion the pantheistic philosophy of Shushi (Chu Hi).[12]

The luxury and poetry of the Tō (Tang) were followed by the struggles of the Sō (Sung, A. D. 970-1127, or including the "Southern Sung" until 1277). During the reigns of Chin-tsung and of his son Tin-tsung "a violent controversy arose among the literati and officials as to the best mode of conducting the government. Some of them, as Sz'ma Kwang the historian, contended for the maintenance of the old principles of the sages. Others, of whom Wang Ngan-shi was the distinguished leader, advocated reform

[11] The Middle Kingdom, Vol. II, p. 166.

[12] The Chinese philosophy is sometimes called "agnostic," so "a friendly German critic" in "Things Japanese," p. 94, and that too was once my opinion, "Osaka Conference," p. 115. It is not agnostic, but pantheistic, as will abundantly appear.

and change to the entire overthrow of existing institutions. For the first time in the history of China two political parties peacefully struggled for supremacy, each content to depend on argument and truth for victory. The contest soon grew too bitter, however, and the accession of a new monarch, Shin-tsung, enabled Wang to dispossess his opponents and to manage state affairs as he pleased. After a trial of eight or ten years the voice of the nation restored the conservatives to power, and the radicals were banished beyond the frontier. A discussion like this, involving all the cherished ideas of the Chinese, brought out deep and acute inquiry into the nature and uses of things generally, and the writers of this dynasty, at the head of whom was Chu Hi, made a lasting impression on the national mind."[13]

THE PHILOSOPHERS OF THE SŌ.

The best known of the "orthodox" philosophers of the Sō are Chow Tun-i, (A. D. 1017-1073), the brothers Ch'eng (A. D. 1032-1085, and 1033-1107), and above all Chu Hi. Of the younger Ch'eng it is said,—"His criticisms on the classics opened a new era in Chinese philosophy and were reverently adopted by his great successor Chu Hi."[14] The names of Ch'eng and Chu are associated together, and the dominant philosophy is called the system of Tei-Shu (Japanese pronunciation).

These philosophers may be compared to the schoolmen of Europe. They were no longer satisfied with the earlier unsystematic exposition of the Confucian ethics, but called metaphysics to their aid and transformed the groups of aphorisms and precepts into an ontological philosophy. As the schoolmen mingled with the teachings of the prophets and apostles elements drawn from Grecian and Eastern philosophy, so did these Chinese schoolmen mingle elements drawn from Buddhism and Taoism in their system based ostensibly on the classics. Their indebtedness to these two

[13] The Middle Kingdom, Vol. II, p. 174.

[14] Mayers's "Manual," p. 34.

religions was none the less real because of their vehement rejection of both as heretical. And as the teachings of the schoolmen ruled European thought for centuries and were the medium through which the words of Christ were studied, so were the teachings of the Tei-Shu school supreme in the East and the medium through which China and Japan studied and accepted the words of the Sages. To disregard their philosophy and suppose that the earlier and simpler teaching has remained supreme, is as if we should disregard the whole historical development of theology and state that the synoptic gospels have contented Europe for eighteen hundred years.

Shushi was born in the year 1130 and died in the year 1200. He was historian and statesman as well as commentator and philosopher. Educated in Buddhism and Taoism, he rejected both and completed the system of Ch'eng. He was repeatedly employed by the emperor in posts of high importance, but finally died in retirement. His system has remained the standard in China and no deviation from his teaching has been permitted in the examinations. His commentary is the orthodox exposition and his philosophy the accepted metaphysic.[15] "The Sect of the Learned" designates his followers.

[15] Shushi's name is variously written by writers in China, Chu-hsi, Choo He, Chu He, Chu Hi and Ku Hsi. Dr. Legge has used much of Shushi's commentary in connection with his various translations. Accounts of his life are given by Mayer, p. 25; Meadows, The Chinese, Chap. XVIII; in the Chinese Repository, Vol. XVIII, p. 206 f. A section of his writings has been translated by Medhurst, Chinese Repository, Vol. XIII, pp. 552, 609 ff. Also by Canon McClatchie,—"Chinese Cosmogony," being "Section Forty-Nine of the Complete Works," with criticisms and defence in The China Review, Vol. III, p. 342 f., Vol. IV, pp. 84, 342 ff. "The Middle Kingdom" has various references to Shushi (Chu Hi), the most extended being Vol. I, pp. 682-685. An interesting account of some points in his philosophy is given by W. A. P. Martin, D. D.,—"The Cartesian Philosophy before Descartes, (Extract from the Journal of the Peking Oriental Society)." See also Faber's "Doctrines of Confucius," pp. 32-33. Rev. Griffith John, Journal of the North China Branch of the Royal Asiatic Society, Vol. II, No. 1, pp. 37-44., The, Ethics of the Chinese."

SHUSHI'S SYSTEM.

The philosophy of Shushi (Chu Hi) is thus described by Eitel:—"Though modern Confucianism has long discarded the belief in the one supreme God, of which their classical writings still preserve a dead record, and though they substituted for the personal God whom their forefathers worshipped, an abstract entity, devoid of personality, devoid of all attributes whatsoever, yet they look upon nature not as a dead inanimate fabric, but as a living, breathing organism. They see a golden chain of spiritual life running through every form of existence and binding together, as in one living body, everything that subsists in heaven above or on earth beneathf What has so often been admired in the natural philosophy o. the Greeks,—that they made nature live; that they saw in every stone, in every tree, a living spirit; . . .—this poetical, emotional and reverential way of looking at natural objects, is equally a characteristic of natural science in China."

There is a "child-like reverence for the living powers of nature," a "sacred awe and trembling fear of the unseen," a "firm belief in the reality of the invisible world and its constant intercommunication with the seen and temporal."

"Choo-He's mode of thinking has in fact been adopted by modern Confucianism." According to him "there was in the beginning one abstract principle or monad, called the 'absolute nothing,' which evolved out of itself the 'great absolute.' This abstract principle or monad, the great absolute, is the primordial cause of all existence. When it first moved, its breath[16] or vital energy congealing, produced the great male principle. When it had moved to the utter-

[16] "Between heaven and earth there is nothing so important, so almighty and omnipresent as this breath of nature. . . Through it heaven and earth and every creature live and move and have their being. Nature's breath is, in fact, but the spiritual energy of the male and female principles." "Feng-shui," p. 45.

most it rested, and in resting produced the female principle. After it had rested to the utmost extent, it again moved, and thus went on in alternate motion and rest without cessation. When this supreme cause divided itself into male and female that which was above constituted heaven, and that which was beneath formed the earth. Thus it was that heaven and earth were made. But the supreme cause having produced by evolution the male and female principles, and through them heaven and earth, ceased not its constant permutations, in the course of which men and animals, vegetables and minerals, rose into being. The same vital energy, moreover, continued to act ever since, and continued to act through those two originating causes, the male and female powers of nature, which ever since mutually and alternately push and agitate one another, without a moment's intermission.

Now, the energy animating the two principles is called in Chinese K'e (Japanese Ki), or the breath of nature. When this breath first went forth and produced the male and female principles and finally the whole universe, it did not do so arbitrarily or at random, but followed fixed, inscrutable, and immutable laws. These laws or order of nature, called Li, were therefore abstractly considered prior to the issuing of the vital breath, and must therefore be considered separately. Again, considering this Li (Japanese Ri), or the general order of the universe, the ancient sages observed that all the laws of nature and all the workings of its vital breath are in strict accordance with certain mathematical principles, which may be traced or illustrated by diagrams, exhibiting the numerical proportion of the universe called Su, or numbers. But, . . these three principles are not directly cognizable to the senses : they are hidden from view and only become manifest through forms and outlines of physical nature." [17]

[17] "Feng-shui," pp. 5–9., See "Ki, Ri and T'en" below. Also my "Comment" below for a further exposition, differing somewhat from Eitel's.

ITS JAPANESE OPPONENTS.

This is the system which came to Japan in the 17th century and won the adherence of all educated men. It displaced Buddhism at once and finally in the regard of the higher classes. Buddhism indeed made no defence but accepted its fate. Later on however the orthodox Chinese philosophy encountered other enemies. The revival of an interest in history, fostered by the Tokugawa, was followed by a revived interest in Pure Shintō, a Shintō disentangled from its Buddhistic ally and restored to its supposed early form. This religion was intensely national and intensely anti-Chinese in spirit.[18] It waged its war, not wholly without effect, in the eighteenth and nineteenth centuries. It affected somewhat the later writers of the Chinese school. But the followers of Confucius, or better of Shushi, to the end commanded the assent of the great majority of educated men. And this, too, in spite of still another attack. This was made by the school of Ōyōmei 王陽明. In opposition to the "scientific philosophy" of Shu-shi it sought to substitute an idealistic intuitionalism.

Shushi attempted to agree with the differing schools of Chinese thought, bringing them together in spite of their inherent differences. He was to this extent an eclectic. He was strongly conservative and held fast to the past, it being understood of course that his own interpretation was to be accepted as the teaching of the past. He was historian and commentator as well as philosopher. Already in his own time his views met opposition in favour of a free development of thought. And among the men of his time Rikusōsan[19]

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[18] See "The Revival of Pure Shin-tau," pp. 13-14, 21-34.

[19] 陸象山 b. 1140 A. D. "In opposition to the critical philosophical erudition of Chu-hsi, Lu desires rectification of heart and life to be the main point, as the commencement and aim of study. There is no doubt that in this Confucius stands on his side." Faber's "Doctrines of Confucius," p. 33.

insisted that his own heart, and not the past should be the chief object of study. He however wrote little and his first great follower was Ōyōmei.

ŌYŌMEI.

Ōyōmei was born in the year 1472 A. D. and died in the year 1528. He was a provincial governor "and in this capacity gained high renown through his conduct of military affairs. In 1518 he subdued an insurrection in Kiang-si and in 1527, conducted a campaign against the wild tribes in northern Kwang-si."[20] He is famous for his humour and for his fine literary style. His style is clear and intellectual, and no one has since equalled it in China or Japan. He was peculiarly fond of studies pertaining to war. He was also a poet of originality and power. In China many scholars accepted his doctrine at once, but in Japan his following has been small, for the Tokugawa government gave its patronage wholly to the school of Shushi and forbade the public teaching of the doctrines of Ōyōmei.

Ōyōmei was not a repeater of past wisdom, nor a commentator: he sought to find all truth within his own heart. He cared nothing for the scientific investigation of the outer world, nor for the study of history. He even thought that all reading might be dispensed with and refused to commiserate a scholar who was lamenting the loss of his sight, Ōyōmei assuring him that he should be content, since he bore all truth within his own heart and needed not eyes to aid in studying that.

SPIRIT AND LAW.

Differing thus in method he also denied the fundamental positions of the philosophy of Shushi. The latter, as we have

[20] Mayers's "Manual," p. 246. This brief paragraph is all I have been able to find in English. A lecture recently given by Prof. Inoue of the Imperial University is the authority for my account of Ōyōmei and his philosophy. Printed in the Rikugo Zasshi—Feb. 1892.

seen, taught the existence of both "ki" and "ri," spirit and law. His conception of "ki" corresponded to the Stoic doctrine of "pneuma."[21] Ki by no means necessarily implies personality. Sometimes it is described as if it were the essence, the inner power, of all things. It is not "spiritual" in our modern and defined use of the word. It is identified with the air. It exists in all things. All things may be called "ki," the grass, the trees, the human body. But man's heart is also "ki" and shows its nature when the passions are aroused. From this point of view we might think Shushi as strict a materialist as the Stoics, but then too we should interpret matter in the Stoic and not in the modern sense. There are formless ki and ki impalpable and invisible. Over against the ki is placed the "ri," the law, the principle of nature. Ri is invisible and is the same as the "Way," as reason. It is not however merely abstract, for then would it be the same as the Buddhist "nature." Ri is an entity as real as ki, indeed even more truly an entity for it (theoretically) preceded ki and ki depends on it.[22] Still in the actual world there is no ki without ri and no ri without ki. Man's heart, his ki, is polished and refined by the ri, so the ri must be studied and thus the fundamental process is "the distinction of things."[23] If we do not thus "know," even the best action will not avail.[24]

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[21] Pneuma "is the totality of all existence; out of it the whole visible universe proceeds, hereafter to be resolved into it again. . . . Out of it separated first the elemental fire, and this again condenses into air; a further step in the downward path derives water and earth from the solidification of air. . . . From the elements the one substance is transformed into the multitude of individual things." Enc. Brit., art. Stoics. Compare pp. 46-47 below.

[22] For an example of the process of this "reification of the concept" see p. 47 below.

[23] This method professes to rest upon a phrase of Confucius. "the distinction of things." See p. 43 note, below.

[24] P. 72 below.

ŌYŌMEI'S IDEALISM.

Now Ōyōmei was an idealist and would have none of this distinction into ki and ri. Outside of the heart itself there is no ri, no law, no principle. The heart and the ri are identical. All the ri is contained within the heart and there is no place for "the distinction of things." The heart is the same as the "Way" and the "Way" is the same as "Heaven." If a man knows his heart he knows the "Way" and if he knows the "Way" he knows Heaven. All depends on purifying the heart. Good and evil are all of it, and there is neither good nor evil apart from it. Men are all good as Shushi, after Mencius, taught, and can all purify their hearts if they will, though in this too there are natural differences. All men are divided into three classes, and the highest have an intuitive knowledge that is their own innate standard. This innate knowledge is however in all men; make it clear and all is clear. And it is purified by obedience to the five relations and the five virtues. We gain nothing from without; all is already within and needs only to be thus studied by obedience. To act is to know. If we say we know, we already act or we do not truly know. Knowledge is the beginning of action and action is the completion of knowledge.

Thus ethical science is the only science and nothing else is worthy of our attention or thought.[25]

Ōyōmei fully accepted idealism. He asserted that apart from our hearts there is nothing. The flower comes into existence when it becomes known and ceases to be when it passes out of our knowledge. But he also teaches a cosmological idealism, as he asserts that there is this all important innate knowledge, the best endowment of man, in everything, in grasses, stones, trees, in Heaven and in Earth.

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[25] Ōyōmei's system may be studied in the 傳習錄, Den-shu-roku, the Zen-sho and Zen-shu, 陽明全書 陽明全集.

By virtue of it each thing is itself and all partake of the same ethical law.

Ōyōmei was in his early years a believer in Buddhism and his writings show strong marks of its influence, but he rejected it as a system. He taught that his purpose differed from the Buddhist. The end of his doctrine was not self-absorption in mystic contemplation, but the attainment of virtue, the attainment of the practical virtue needed by men alive and of the world.

JAPANESE FOLLOWERS OF ŌYŌMEI.

The profound repugnance this system excited among the followers of Shushi is well represented in the Shunda-Zatsuwa.[26] The government of the Shōgun forbade its propi agation and permitted only the orthodox teaching in its schools. Several well known scholars are reputed followers of Ōyōmei, although their published writings do not expreesly indicate the fact. Among others is Nakai Tōju (Ōmi Seijin). He lived in the first half of the seventeenth century and was a voluminous writer. In his writings on ethics he does not profess his dependence on Ōyōmei, yet agrees with him in all the essentials of his system.

THE OKINA MONDŌ.

"How can we be sure then of the proper course of conduct? Hold fast in our hearts the great principles of unselfishness and humility, cast evil out of our hearts and follow truth."[27] His teaching does not expressly differ from the "orthodox" school, yet his emphasis is different. He exalts "heart learning," insists upon the supreme duty of "polishing the illustrious virtue" of our hearts and proclaims the Confucian laws to be the "manifestation of the virtues of the heart." To him the heart learning is in all, but the sage intuitively beholds it

[26] Pp. 28 f. below.

[27] Okina mondō. Vol. II p. 3.

while others are indebted to his teaching. Still may all, even the ignorant, attain the blessedness of virtue, as the heart learning extends from lowest to highest, and all go therein, yet with distinction of powers and place. "The great highway is for all, but the travellers are not of equal strength. There are men and women, old and young, weak and strong; for every one there is a duty suited to his powers, and doing that he fulfils the law of filial piety."[28] "But," objects the questioner, "this virtue is so broad that I cannot attain it." And the answer is,—"That is the suggestion of a bad heart. You can attain it just because it is so broad. The light of sun and moon goes everywhere, and each one according to the strength of his eyes can use it; so every one, man and woman, learned and unlearned alike, can obey this virtue according to each one's ability. In Heaven it is called Heaven's 'Way' and on earth, earth's 'Way.' Originally it had no name, but for the sake of teaching the ignorant the Sages called it 'filial obedience'"[29] "It dwells in the universe as the spirit dwells in man. It has no beginning nor end. Without it is neither time nor being. In all the universe there is nothing without it. As man is the head of the universe, its image in miniature, filial obedience is in both body and spirit and is the pivot of his existence." "As a looking-glass reflects many shapes and colours but is itself unchanged, so does filial obedience reflect all the virtues, itself unchangeable. All the virtues, all duties may be resolved into it, and it is called filial obedience, because obedience to parents is the beginning of the 'Way.' Its essence is to perceive that as our bodies are derived from our parents and are yet one with them, so are their bodies derived from the spirit of heaven and earth, and the spirit of heaven and earth is the offspring of the spirit of the universe; thus my body is one with the universe and the gods. Clearly perceiving this

[28] Okina Mondō, Vol. V. p. 35.
[29] " " Vol. I. p. 3.

truth and acting in accordance with it is obedience to the 'Way.' This 'obedience is like the great sea, and the various relationships are like vessels with which we dip out the water; as the vessel is big or small, round or square, so the water appears, but it is all alike the water of the great sea."[28]

It is this implicit dependence upon the intuitions of the heart that gives the system of Ōyōmei its attractiveness to many Japanese. "His followers were few, but were all strong men,"[29] we are told. And on the other hand,—"Shushi's teaching is admirable but it weakened and enervated the spirit of the Japanese."[30]

DIFFERENCES AND AGREEMENTS.

The two systems differ, but their points of agreement are more than their divergencies. They are mere varieties of the Jukyō, "The Sect of the Learned." Both rest upon the same fundamental ethical propositions, however distinct their more metaphysical principles. They are alike in the belief that righteousness is life. The shortest time is sufficient, is the "true long life," if spent in conformity to the 'Way.' A clear perception of the 'Way' includes all the rest; this is the true long life and wealth and peace, for if the heart be at rest outward circumstances matter not. And an evil heart includes all the curses; sights and sounds are painful; even without outward sorrow there is no rest."[31] Both rest their authority ultimately upon the classics, though the Ōyōmei school put less stress upon mere learning. "If one sentence of the Book of Changes be mastered it will teach all that is in the classics. But the Book of Changes is diffi-

[28] Okina Mondō, Vol. I. pp. 3-7. The Okina Mondō is a posthumous work of Nakai Tōju printed in 1650 A.D. I printed an abridged translation in "The Chrysanthemum," Vol. II., Nos 3, 4, 6, 8.

[29] Prof. T. Inoue.

[30] The Rev. M. Uemura.

[31] Okina Mondō, Vol. II., p. 34.

cult of comprehension, so Confucius wrote the Classic of Filial Piety. This will suffice; but after it is mastered, according to time and strength we are to go on to others." This doubtless is a point of great practical difference, the orthodox school recommending a study of the books that shall occupy the entire life. Yet both agree in reprobating a scholarship that is apart from morals, that is not expressed in action, that does not govern the life. "True learning is disregard of self, obedience to the 'Way' and the observance of the five relations. Its eye-ball is humility. Wide learning applies all this to the heart. False learning desires the honour of wide learning, envies those who excel, wishes only for fame and makes pride its eye-ball. It has nothing to do with obedience and the more one has the worse he is. Let us beware lest we tread the evil way leading down to the brutes and the dominion of the devils. False learning fosters this pride and never thinks of casting it away."[32] "Humble folk who obey but cannot read are taught by others; not reading it is as if they read. That is heart-reading, for it conforms to the heart of the Sages. Mere reading with the eye while the heart is far away is not true reading; it is to read as if reading not. In the age of the gods, imitation of the conduct of the Sages was true learning. Now there are no Sages, and true learning consists in understanding the classics and regulating conduct thereby. Thus may we polish the illustrious jewel of our hearts. To cast away the classics and trust our dark misled hearts, is to cast away the candle and seek in the dark for that which is lost."[33]

ATTACK ON BUDDHISM.

Both systems strongly express their hatred of Buddhism and ignore their indebtedness to its teaching. "In India Shaka (Buddha) himself never got beyond the outside

[32] Okina Mondō, Vol. III., pp. 10–12.

[33] " " Vol. III., pp. 12–14. Compare pp. 61 below.

of things. His purpose was indeed good but he was ignorant of the essential principles. After his death even the semblance of truth disappeared, and his system dissuaded from virtue and excited to evil. It is to be classed with Taoism, and is a thorn in the 'Way,' an obstruction to the gate of truth; it is to be avoided as one would flee an evil voice and the temptations of lust."[34]

Ōmi Seijin was the first great writer on the Chinese philosophy in Japan and his memory is still cherished as a man pure in life, strong in influence and great in letters. He established a school and had many followers, of whom Kumazawa Ryōkai is the best known. Later Ōshio Heihachirō is the chief representative of the Ōyōmei school. He left little in writing, but is everywhere known for fierce opposition to Tokugawa and his connection with the Ōsaka insurrection of 1839.[35]

THE ORTHODOX SCHOOL.

The scholar who is usually said to have been the first exponent of the Chinese philosophy is Seiga. He wrote no books. The great scholars of the orthodox school formed a group at the end of the seventeenth century. Of these men the best known is Arai Hakuseki. With his name are associated the names Ito Jinsai, Ogyu Sōrai[36] and Yamazaki Ansai.

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[34] Okina Mondō, Vol. IV., pp. 1–13.

[35] During a time of scarcity Ōshio's wrath was excited by the heartless conduct of an official in Ōsaka who refused to remit the taxes. So Ōshio, influenced by his philosophical views to a democratic disregard of official rank and right, led an assault upon the government warehouses, took out the grain and distributed it to the people. The rising was quickly put down and Ōshio suffered death as a criminal. Another account says that en route to Satsuma he was lost at sea—"Dai Ni Hon Jim-mei Ji-sho. Vol. I: 大日本人名辞書 It is possible that the teachings of the Ōyōmei school were more dangerous to the existing order than appears to a foreign student, and that Tokugawa knew its own interests best as it forbade their propagation.

[36] Jinsai and Sōrai were not orthodox. See Mr. Haga's "Note" below.

These writers were transmitters of the wisdom of the Chinese and worshipped at the shrine of Tei-Shu. No Western ever held more closely to the plenary inspiration of the Bible as expounded by his favourite commentator than these men to the Chinese Classics. They contain the absolute, eternal truth of Heaven and Earth. By it the universe with all its hosts were formed. This "Way" is the unchanging wisdom, the everlasting reason, the Divine archetype. No deviation from it can go unpunished and no variation in its exposition can be endured. It is not more remarkable that the Japanese orthodoxy attempted no improvement, no amendment in the Classics, than that our orthodox writers attempted no improvement or change in our sacred text. As western writers on theology fill their pages with Biblical references, these writers on the Chinese philosophy fill their pages with allusions to the classics. Direct quotations abound, and references and phrases, so that every sentence has its classical colour.

It is surprising that the Japanese scholars have attempted no systematic exposition of either the orthodox or the heterodox philosophy. They have been content to go to the writings of Shushi and of his Chinese expositors. So too have his commentaries satisfied them. There is not an original and valuable commentary by a Japanese writer. They have been content to brood over the imported works and to accept unquestioningly polities, ethics and metaphysics.[37]

WANT OF ORIGINALITY.

This foreign system moulded the intellectual life of the nation. Within its boundaries thought moved and was confined. As the new was forbidden so was the old cast off. Buddhism and Shintō were as heretical as the teaching

[37] The Ancient Learning School "Kogaku" also rested upon the modern Chinese School.—Faber's Doctrines of Confucius, p. 34; and Mr. Haga's "Note" below.

of Ōyōmei. Society, government, education, literature, religion and ethics, all were supplied from this one source. Buddhism, as we have seen, influenced the thought of the Chinese philosophers, but it was permitted no new influence, it was permitted to add no new ideas here in Japan where it had been supreme for a thousand years. Shintō effected no modification. And the Japanese produced no scholar who could do more than repeat what he had been taught. Yet this philosophy in thus permeating the nation's life could not fail to be modified. It felt the influence of the national ideals. It varied from its original standard, yet not as modified in statement or in system but as insensibly taking on a new colour and feeling a new spirit.

It follows that one cannot readily point out the distinguishing characteristics of the Chinese philosophy in Japan. There is certainly a difference. Here the samurai takes to himself the title reserved in China for the literati and adds arms to letters. The vocation of arms occupies thus the highest place of honour. So too does loyalty take precedence of filial obedience and the ethical philosopher can praise without qualification men who desert parents, wife and children for the feudal lord.[38] And with this loyalty is an undue exaltation of a disregard of life, an exaltation that comes near to canonizing those who kill themselves no matter how causelessly, no matter though crime be the reason for an enforced suicide.[39] The impetuous, uncompromising, warlike, partisan character of the people is reflected in their morals.

CONFUCIANISM AND THE PEOPLE.

The Confucian literature in Japan so far instructed the mass of the people as to provide summaries of moral rules for them. But these moral rules could exist in harmony

[38] Similar instances are found, of course, in Chinese history.

[39] Pp. 41-42 below

with a prevailing Buddhism. And as in China for centuries and in Japan for a thousand years the Chinese ethics knew no quarrel with the religion of the Buddha, so even after the educated men in Japan had given up Buddhism it still retained its full power over the lower classes and could incorporate the Confucian ethics with itself.

One effort, long continued, was made to win the people not merely to the Confucian ethics but to the foreign philosophy. Toward the close of the eighteenth century a school of popular preachers expounded the rudiments of the Chinese system to the people. They made such concessions to Buddhism as they thought the case demanded, but sought to substitute their system for the people's faith. They continued in a succession until the middle of the nineteenth century but their failure was complete. They made no lasting impression upon the nation's mind. The Chinese philosophy remained the exclusive possession of the higher classes.[40]

THE REJECTION OF BUDDHISM.

The choice of the Chinese philosophy and the rejection of Buddhism was not because of any inherent quality in the Japanese mind. It was not the rejection of supernaturalism or of the miraculous. The Chinese philosophy is as supernaturalistic as some forms of Buddhism. The distinction is not between the natural and the supernatural in either system but between the seen and the unseen. The Chinese philosophy does not reject the extraordinary; it has a belief in an all-pervading natural "law", but the wonderful and the prodigious are contained therein. It too has its Theo-

[40] Numerous translations of the sermons of this school have been printed, among the earliest in A. B. Mitford's "Tales of Old Japan" pp. 288-326. The sermons called Kyuō Dōwa and Shingakū Michi no Hanashi are best known. Besides these there are among others; —Shō-ō Michi no Hanashi, Dōni-ō Dō-wa, Shingaku-kyoyu-roku', and Zoku-zoku Kyuō Dōwa.

phanies and its faith-compelling signs. It was not the rejection of a religion for a philosophy, for Buddhism can be as philosophical as Shushi or Ōyōmei, in fact these drew much of their doctrine from its stores. And the Chinese philosophy is as religious as the original teaching of Gautama. Neither Shushi nor Gautama believed in a Creator, but both believed in gods and demons. By the twelfth century A. D. the earlier belief in monotheism, granting that once there was such belief in China, had disappeared. In a single passage the Shundai Zatsuwa seems to indicate belief in one personal God, but the expressions fade away, and there remains only a belief in the Divinity of the immanent forces of the universe.[41] It holds to "a power not ourselves that makes for righteousness" and to our constant dependence upon the Unseen. It has little place for prayer, but has a vivid sense of the Infinite and the Unseen and fervently believes that right conduct is in accord with the "eternal verities." Its morality "is touched with emotion."

THE ETERNAL VERITIES.

In neither Shushi nor Ōyōmei is there firm grasp of the idea of personality. As there is no personal Creator, man is the highest expression of the forces of the universe. Even gods and devils fear his "determined mind." But as in the makrokosm so in the mikrokosm: the ultimate realities are force and law. Man has no immortal soul. He is highest in the scale of existence, yet is he only one in the endless series. The station is greater than the individual and it determines him. His whole duty is to live as befits his station. The Buddhist doctrine that a man may leave his station and become a priest is to be abhorred. It comes from the false doctrine of "three worlds." Shaka forsook his kingdom and became a hermit. He did not know fully the truth. To the Confucianist such asceticism is the act of

[41] P. 50 below.

a madman. Every man is to follow the "Way" with unshaken heart in the station in which he was born. To think certain acts virtuous is the error of the ignorant and the heretical."[42]

THE ORIGIN OF EVIL.

For all evil is disarrangement. Confusion is the essence of evil. Strictly speaking there is no other evil. "Nothing is bad by nature but everything is good, yet with a distinction of rank." When this distinction of rank is preserved all are good. But this ideal goodness is rarely realized. "The gods are the activity of Heaven and Earth, the excellent power of the In and Yō, and of the true 'law.' . . . . . But as the gods come to the world there is both good and evil. For though the working throughout the four seasons of the five elements is of . . . . . no evil at all, still as that 'spirit' is scattered throughout the universe and confused there arise unexpected winds, heat, cold and storms."[43] So is it with man and all that is his. As a part of nature he too is good, originally good, but as his "nature is individualized both good and evil appear."[44] Let him put himself in harmony with the true nature,—above all let him obey with unshaken heart, and all will be well.

So with the state, crime is "confusion." The ancient order has been lost and therefore evil appears. "In the time of old the Sage was on the throne; the Superior Man was next in authority and all who ruled were wise, the stupid occupying their natural position below the rest. So from highest to lowest wisdom determined the rank and there was none evil. The only distinction was of superior and inferior."[45] And the Sage ruled by doing "nothing." It was enough that he was enrobed, enthroned, with folded

[42] The Okina Mondō, Vol. V. pp-17-18.

[43] P. 55 below.

[44] P. 55 below.

[45] The Okina Mondō, Vol. II., p. 31.

arms. Not by vain exertions and strife may the empire or the individual be ruled. It is by doing nothing, by letting nature have its way that a Divine excellence is attained.

THE DEEPER SELF.

Man's deepest "self" lies hidden far below his changing "self" of act and thought and desire and will. In mysterious darkness it is nourished and by doing naught. Let not man break in on that depth; let him not direct and will and wish. The springs of his being reach down to the springs of the universe itself. Without selfishness, without rash self-determination, let the truer, deeper "self" be nourished and from that strength the life will come and then in act and word there shall be no danger of a fall.[46] And at death man shall return to the all pervading spirit, "as a vapour in the sky melts away, as a drop mingles with the sea, as fire disappears in fire."[47] He can have no immortal soul. For his conscious self there is "nothing beyond slipping into the grave." His highest hope is that his influence for good may survive; and his greatest fear is that his memory may be accursed.[48] He worships his ancestors as commanded by the Sages, but that worship does not necessarily imply the doctrine of a conscious, personal immortality.[49] "The soul wholly dis-

[46] P. 60 below. Compare a certain phase of Christian mysticism:—"Oh to be nothing, nothing;" "A broken and empty vessel;" "Emptied, that He might fill me;" "Broken, that so unhindered, His life through me might flow."

[47] The Okina Mondō, Vol. V p. 26.

[48] P. 40 below.

[49] The worship of ancestors remains an inconsistency difficult of explanation in Shushi's philosophy. He teaches (in the Gorui 語類) that at death we are like the flame: it ascends and disappears yet we cannot say that it has ceased to be. It is the law that man's spirit (ki 氣) dissolves at death, vanishes into thin air; but there are exceptions. When men naturally, and, so to speak, willingly die the spirit thus dissolves, but when they die violently, with strong protest, the spirit remains for a time collected and may return and show it-

solves at death but my spirit is one with the spirit of my ancestors. So though all other spirits dissolve yet does the root of this remain and when I worship their spirits gather again. So it was that the Sages enforced this worship. And as my spirit is one with the spirit of my ancestors, so is the spirit of the noble one with the spirit of his dominion, and when he worships the spirits of the dead respond· When I speak of the universe there is indeed only one spirit; when I speak of myself, my spirit is the spirit of my ancestors and so it is that when I 'feel,' they 'respond.'

ADOPTED ON FAITH.

Without critical examination and upon faith Japan accepted the Chinese philosophy. Once it had accepted the Chinese ethics in alliance with the Buddhist religion; as trustingly it adopted the philosophy of Tei-Shu with all its hostility to the Indian faith. Nor did the "eclipse of faith" cost the scholars of the period of the Tokugawa any heart burnings. Buddhism went at once at the bidding of this new comer and left "not a wrack behind." In acceptance and rejection alike no native originality emerges, nothing beyond a vigorous power of adoption and assimilation. No improvements in the new philosophy were even attempted. Wherein it was defective and indistinct, defective and indistinct it remained. The system was not thought out to its end and independently adopted. Polemics, ontology, ethics, theology, marvels, heroes, all were enthusiastically adopted on faith. It is to be added that the new system was superior to the old, and this much of discrimination was shown.

It is not my purpose to discuss the Chinese philosophy, not even the Tei-Shu philosophy as represented in Japan.

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self and work harm. A man who was killed by his adulterous wife appeared to her undoing, for his hatred held his spirit together until vengeance was executed. But such exceptions are only for a time; finally all alike return to the primeval spirit. Shushi thus saves his philosophy and his orthodoxy.

I desire to represent the spirit and thought of Old Japan, of the educated men of the Tokugawa period. And a Japanese can best do this, a Japanese who gives his account with undisturbed faith and who is a recognized master among his countrymen. In the Shundai Zatsuwa of Kyusō Murō we have the ruling ideas of the Japan that has forever passed away.

MURŌ NAOKIYO.

Murō Naokiyo was born in Yanaka, in Musashi, on the 30th March, 1658. From the home of his ancestors, Egagori in Bichu, he called himself Ega. From his earliest childhood he was distinguished for his love of books and unremitting diligence in study. His life was the wholly uneventful career of a professional scholar. When fifteen years of age he went to Kaga and was employed by the prince of that province. Here he lived in a dismantled cottage which he named The Pigeon-nest, and from the cottage he adopted the same name for himself, Kyu-sō, a name by which he was thenceforth known, and that is inscribed on his tomb.

Once when expounding The Great Learning before his prince the latter was so greatly pleased that he sent Kyusō to Kyōto to continue his studies in the school of the celebrated Kinoshita Jun-an. Here Kyusō took first rank and made great progress both in acquirements and in literary style.

From the year 1711 until his death he was employed by the Tokugawa Government and wrote several books at its command. He received the highest honour the Government could bestow, and rose to great influence and authority. He was the devoted advocate of the Tokugawa family and of the orthodox school of Chinese philosophy, and made small attempt to moderate his expressions when writing of their enemies. It was during his life that the famous forty-seven ronin performed their exploit, and Kyusō gave them the name by which they are still remembered, Gi-shi, the Righteous Samurai.

He died on the 9th September, 1734, and was buried at his own request in Edo, Ōdzuka, Tsukuba-yama-no-ushiro, his grave marked by a simple stone engraved, "Kyusō Murō Sensei no Haka," the grave of the scholar Kyusō Murō.[50]

Since his death his reputation has increased, and he has taken a distinguished place among the scholars of Japan, being especially remembered for his great learning.

THE SHUNDAI ZATSUWA.

The Shundai Zatsuwa, Suruga Dai Miscellany, thus named from Kyusō's residence on Suruga Dai, is a posthumous work first published by his grandson in the year 1750. It purports to be a collection of talks with his friends and pupils. They would linger a while after Kyusō had completed his exposition of the Chinese books, asking questions and discussing themes suggested by the lecture. And these conversations written down were made into this book. It belongs to the class called "miscellanies," the works which best represent the spirit and the attainments of the Japanese scholars.[51]

The Sundai Zatsuwa covers a somewhat wide range. It contains polemic against the enemies of the faith, metaphysics, fundamental ethical principles, politics, religion, the art of war, and the laws of literature and poetry.

It has not been necessary for my purpose to translate all. The literary criticisms, the discussions of poetry and of military strategy have been omitted. So too have many of the historical incidents. Where these incidents illustrate

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[50] The 先哲叢談 is the authority for these statements. His burial place is in the section of the city now called Koishikawa. He wrote many books; among them the most celebrated are the following: 大學新疏義人錄 五常五倫名義 六倫衍義大意 駿台雜話 朝鮮客舍詩文稿 士說補正成諸士教 國體正義 獻可錄 神儒問答 西銘洋議 大極圖述

[51] Such collections are among the most valuable of the writings of the Chinese also, Confucius and Shushi, among others, using this method.

ethical principles or the ideas of the school they have been retained. But Kyusō felt moved to rescue the memory of the righteous dead from oblivion, and relates incidents which add nothing to our understanding of his ethical and philosophical views. Many Chinese allusions and illustrations have been omitted. The book is famous for its learning, and abounds in phrases and incidents that are of significance only to one throughly versed in Chinese history and literature. Some liberty, therefore, in the way of condensation has been taken. As the work is not a classic, and as the purpose is to set forth the ruling ideas and spirit of the Chinese philosophy in Japan, it has been thought wise to sacrifice something of technical scholarship to intelligibility. And it may be added, the retention of the literary and historical allusions in their fulness would precisely defeat the author's purpose, his ornaments in Japanese becoming blemishes in English. All that sets forth the philosophy and religion, the ethics and politics both theoretical and applied, with copious historical illustrations, have been translated. Perhaps half of the text is represented here.

The sacred memories of the past, the treasures of philosophy and religion, the high aspirations after benevolence and righteousness, the ideals of the individual and of the state stand in the Shundai Zatsuwa, upon a literary background flowing, full, poetic. No attempt has been made to transfer this literary flavour, and at the end of his labours, comparing the result with the original, the barrenness and baldness of the one with the richness and smoothness of the other, the translator can only adopt as his own the author's lament;—"Though his philosophy is the famous music of the world, yet now is it like Eikaku's Song of Spring among a people of barbarous speech."

SHUNDAI ZATSUWA. BOOK ONE.—BENEVOLENCE.

THE AGED SCHOLAR'S PREFACE.

I was born in Musashi, and when my hair was first fastened in a queue studied the Chinese poetry and history. Thenceforth I wrote essays on themes which interested me, presented my writings to the daimyō and was entertained in their mansions. Or, with my box of books upon my back I lived like a traveller in Kyōto. Afterwards I made my home in the north,[2] ever studying the ancient writings, and constantly strengthened my purpose to perfect myself to the end of life. But, unexpectedly, I was summoned by my lord and returned to my native place.[3] Thus have I grown old and imbecile and wait for death to pillow my head upon the hills. Many years and months have passed away and now at seventy-four, in the old age of horse or dog, though I love learning and purpose to follow the "Way," I have no virtue that fits me to be leader or teacher. Nor have I ability for aught else, and stay useless in the world. This is far other than I had purposed. So I expound that which I have learned to those who believe in the Old Man and come to him with questions. If I can help future scholars it will be the reward for my long life, and in illness and pain I comment constantly upon the books.[4]

One day after the exposition, when the talk was of the changes in the learning since the times of the Sō, one of

[1] The five books are named after the five cardinal virtues, but without especial significance.

[2] At fourteen or fifteen years of age his hair was tied in a queue. He lived with the samurai. And his home in the North was Kaga.

[3] To Edo, by the Shōgun.

[4] The expressions of humility are conventional. Kyusō had the highest influence and honours given by the Tokugawa to a scholar. He was admitted to the immediate presence of the Shōgun and was consulted on affairs of state.

these present expressed doubts as to the philosophy of Tei-Shu;[5] and the Old Man replied:—

When young I was seized with worthless anxieties. I cannot worry and waste time until suddenly I perceived the folly of such study and resolved to seek that wisdom of the men of old which is for one's self.[6] Yet alas! Without teacher or friend I was bewildered by the conflicting opinions of scholars, and half doubted, half believed the teaching of Tei-Shu. So the time still passed in vain until I was forty years of age when I fully accepted this philosophy,[7] understanding that nothing could take its place. For thirty years I have read and pondered it. Looking at its heights, how transcendent! Seeking to divide it, how compact! Yet it is neither too far away and high, nor too shallow and near at hand! Should Sages again appear they would follow it! For the "Way" of Heaven and Earth is the "Way" of Gyō and Shun;[8] the "Way" of Gyō and Shun is the "Way" of Confucius and Mencius; and the "Way" of Confucius and Mencius is the "Way" of Tei-Shu. Forsaking Tei-Shu we cannot find Confucius and Mencius. Forsaking Confucius and Mencius we cannot find Gyō and Shun; and forsaking Gyō and Shun we cannot find the "Way" of Heaven and Earth. Do not trust implicitly an aged scholar, but this I know and therefore speak. If I say that which is false, that which I have not verified, may I instantly be punished by Heaven and Earth.

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[5] The Sō, pp. 4-5 above. The philosophy of Tei-Shu, p. 5 above

[6] A teaching that governs one's own life.

[7] So Confucius "at forty had no doubts." Analects, II; IV, 3. At "fifteen he had his mind bent on learning."

[8] The mythical Sage kings of China. Gyō according to the ordinary untrustworthy chronology began to reign B.C. 2357 and reigned 100 years, being succeeded by Shun, who reigned 50 years. "The Middle Kingdom," Vol. II, p. 148.

At this all present straightened themselves and listened intently. The Old Man[8] continued;—This has not waited for my oath, it has been determined these five hundred years. From Shushi's own time the great scholars of the Sō, the Gen and Min with all who followed the Ethical Philosophy have fully accepted him. Men of great learning debated, indeed, his style and minor points but said nothing against his philosophy.[10] So until the middle of the Min, learning was pure and the celebrated truth unimpaired. Then came Ōyōmei with his intuitionalism.[11] He attacked Shushi and changed the learning of the Min. After his death his pupils accepted the Zen[12] doctrines and thenceforth scholars were intoxicated with intuitionalism and weary of natural philosophy. They were either mere memorizers or they were Buddhists. That men without one ten-thousandth of the learning of Tei-Shu should readily find fault is for a wren to mock a bo,[13] for a caterpillar to measure the sea. As Kantaishi[14] says,—"To sit in a well and, looking at the

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[8] Okina, the old man, is a title of respect.

[9] The Gen (Yuen) dynasty was Mongol, A.D. 1280-1368, and was succeeded by the Min (Mings), 1368-1644. "The Middle Kingdom," Vol. II., pp. 175–179.

[10] The text here has a list of Chinese scholars whose names are omitted in the translation in accordance with what is said on p.— above. Of the Sō, Shinseizan, Gikakuzan, of the Gen, Kiyorozai Kosōro, of the Min, Sek-kei-ken, Ko-kei-sai.

[11] Ōyōmei, p. 10 above. His "intuitionalism" is the 良知學. See Mencius, Book VII., Part 1. Chap. XV., 1. p. 44 note below.

[12] The Zen sect of Buddhism, the contemplative sect which professes to use no book.

[13] The bō is a fabulous bird of monstrous size. For "natural philosophy," see "Ki Ri and Ten" below.

[14] 韓退之 Kantaishi was one of the eight most celebrated literary men of China. He was of the time of the Tō (Tang). "He was foremost among the statesmen, philosophers, and poets of the T'ang dynasty and one of the most venerated names in Chinese litera-

sky, pronounce it small." But the superficial ignorant men who adopt these views because of their novelty are numberless.

In our land with peace for an hundred years learning has flourished. I cannot pronounce upon its value, but the ancient models and Tei-Shu have been firmly accepted, a cause for thankfulness. But of late some set forth false doctrine. They have established their school and gathered followers. Evil scholars appear above whom these men seek to advance themselves with senseless arguments, selfishly and wholly without shame. It is the fashion for all the dogs to join when one sets up his lying bark, so evil teachings and doctrines abound. Truly an evil fortune has befallen the ethical philosophy.

Kantaishi lived when Buddhism and Taoism flourished, and comparing himself to Mencius attacked them single handed with an oath,—"The Gods of Heaven and Earth are above, and to the right and left."[15] My oath has not the strength of Mencius but I do not purpose to fall behind the oath of Kantaishi. See to it that you do not hear in vain!"

PRIEST GENKU'S OATH.

The celebrated priest Genku sent his oath to Tsukinowa, Kujō, Kyōto. The document is still in the temple

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ture. . . . . In A.D. 819 he presented a remonstrance to the emperor Hien Tsung against the public honours with which he had caused an alleged relic of Buddha to be conveyed to the imperial palace. The text of Han Yu's (Kantai's) diatribe against the alien superstition is still renowned as one of the most celebrated of state papers. But its only effect was" the banishment of the author. During his banishment Kantaishi laboured to civilize the barbarians with whom he lived, and his efforts are symbolized in a legend that he expelled a monstrous crocodile. Later he was restored to honour. Mayers, p. 50.

[15] The Doctrine of the Mean, XVI. The word for "Gods" here is ki-shin.

of Shin-kuro-tani. I have not seen it but have been told that it is as follows, "If those who say nembutsu[16] go not to Heaven may I sink to Hell." Buddhists doubtless think that a strong oath, but from the point of view of our philosophy what could be more vain? If there is no heaven, of course there is no hell! It is easy to utter such oaths!

In the old days when retainers died with their lords,[17] in a certain clan many samurai were determined thus to end their lives. Among them was one young man who was especially lamented by every one. His karō called at his house and sought to dissuade him. But in vain. Finally, however, as the karō continued importunate his multitude of words forced consent, and the samurai with an oath promised to forego his purpose. So the official went home content. But on the morrow when he went to the temple with those who had resolved to die together there with the rest was this samurai saying his farewells to the guests. The karō exclaimed: "Though you deceive me how dare you break your oath? It is impious!" But the samurai laughed as he replied, "Forgive me for deceiving you. Yesterday had I not sworn you would not have left me, so I swore to satisfy you. As to the gods, though they punish me there is nothing more than death, and as I had determined to die I swore purposing to break my oath." The karō had not a word to say.

Such was priest Genku's oath. He knew there is no Hell, nothing beyond falling into the grave. But my oath is not like these. "With sovereign Heaven above, and treading the sovereign Earth beneath,"[18] by Heaven and Earth

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[16] The Buddhist prayer, Namu Amida-butsu.

[17] The custom was only abolished finally in A.D. 1664; Lay's "Japanese Funeral Rites," Vol. XIX., Pt. III., p. 528 of these "Transactions." A karō was the minister of a daimyō.

[18] The commentary on The Spring and Autumn, Book V., Year XV. p. 165 of the Chinese Classics, Legge's edition.

I swear. So like Genku I purpose to swear for my "Way" but if my oath is false I am punished by Heaven and Earth. Consider, in Buddhism "is" becomes "is not"[19] and truth is made falsehood. Only as that which "is not" becomes that which "is" can we make that which "is" into that which "is not." Only as we turn lies into truth can we turn truth into lies. Though we know that this talk of Heaven and Hell is false, still is it taught as if falsehood and truth were one. So is it taught to many men without distinction of wise and foolish, that if we say nembutsu punishment will be destroyed. This is Buddha's mystery. And here in Japan are many priests who are like the founders of sects who hold this mystery in their hearts. They transfer it from heart to heart and never say that all the talk of Heaven and Hell is false. Genku's oath was such a propagating oath. There is neither Heaven for Tsukinowa nor Hell for Genku. "Is not" is put for "is" and lies for truth, that men may be separated from birth and death. Such was Buddha's purpose.

Compare their scheme with our philosophy which guides men by the very truth! The difference is as the difference between the clouds and the earth.

HERESIES MANY.

Once when the Old Man was ill his friends came to see him and he begged them to stay and cheer his loneliness. So they spent the day in conversation about the prevalent opinions. And one remarked: "I have heard the leading scholars of Edo and Kyōto. Some expound what they call our national religion and confound it with the Way of the

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[19] This refers to the Buddhist hōben, pious devices to lead the ignorant to virtue.

Gods: others follow Ōyōmei and his intuitionalism; and others explain the ancient learning after new principles. Where is the truth in this confusion of strange and familiar opinions? What in your heart do you think?" And the Old Man replied:—

"I too have heard of these schools which have established themselves and teach heresy. Their wisdom is such as you described. But I cannot agree with them. For the "Way" is from Heaven and its source is one. If we know that source we shall not distinguish the religion of our country from that of foreign lands; nor will intuitionalism be opposed to natural philosophy; nor will the learning of the Sages be put in opposition to Tei-Shu. The classical literature teaches all this, but it is not easy nor to be understood unless studied with humble and single minds. But scholars now-a-days are proud, and few of them thoroughly study the Tei-Shu works. Without knowing even the hedge of Tei-Shu they make their own hearts supreme and readily refute those great scholars. We shall postpone the consideration of their learning. We grieve over their thin, light, restless, shallow learning. They have not thoroughly studied Confucius and Mencius and do not understand them, so how can they fail to doubt Tei-Shu? They superficially attack them but I hear of no attacks on Confucius and Mencius. It is not that these scholars do not doubt the Sages but they know that Confucius and Mencius have been honoured and accepted by the world for two thousand years and that it will not listen to attacks upon them. But Shushi is modern and some in the age of the Min attacked him, so they feel at liberty to revile him. "They act according to the man" and not from established principles. They know that their philosophy can in no wise equal that of the Sages, and so make their excuses while they permit themselves to revile Shushi. Thus they hope to exalt themselves above him. But be that as it may!

As to Shintō, it professes to help our country and calls

the Sages rebels.[20] Such a "Way of the Gods" is apart from Benevolence and Righteousness.

The illustrious virtue of intuitionalism is only the "nature" of the Buddhists. The intuitionalists call Musashibo Benkei[21] a samurai of wisdom, humanity and bravery! Such intuitionalism is not of a heart that can distinguish good and evil.

And there are men professing the ancient learning who declare that the Great Learning is not the work of a Sage,[22] and that Confucianism and Buddhism are one! Such ancient learning is apart from virtue.[23]

The Old Man doubts all these teachings. Only the philosophy of Tei-Shu unites outer and inner, includes Benevolence and Righteousness, makes past and present one, and is the orthodox school descended in a straight line from Confucius and Mencius. My only deep anxiety is that its followers will merely argue and expound instead of practising what they preach. Such orthodoxy avails nothing. This evil abounded in the time of the Min, and so it was that

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[20] See Vol. III, Appendix, of the Transactions, The "Revival of Pure Shin-tau" pp. 20-31 for the Shintō attack on the Chinese philosophy. The "holy men" of China are there called "merely successful rebels." And in like spirit were they reviled long ago in China, "The Divine Classic of Nan-Hua" Balfour's, translation, pp. 112-113.

[21] Musashibo Benkei. The priest and robber samurai who became the most trusted retainer of Minamoto Yoshitsune.

[22] If by a Sage the author means Confucius then the Great Learning is not by a Sage, but is accepted as containing his teaching. The Chinese Classics, Vol. I. Prolegomena pp. 26–27. The author in the sections devoted to literature shows some familiarity with the results at least of criticism, but he does not apply it to the classics, uncritically accepting everything as written by Confucius which tradition ascribed to him.

[23] For the Ancient Learning School, see Mr. Haga's "Note" and my "Comment" below. The "Illustrations Virtue" is a phrase of the Ōyōmei School, p. 13, above.

Ōyōmei could reproach Shushi with this side issue. This is the source of heresy and the classics ever forbid such forgetfulness of practice and indulgence in empty talk. It is a subject for the most profound consideration.

THE BLIND OF HEART.

Then one remarked: "We agree that we can best overcome heresy by exhorting each other and striving after righ-conduct. So did Mencius when he replied to the attack of Yo-Bu[24] for he disregarded the charge of being disputal tious and concluded his exposition of fundamental principles saying: "The superior man returns to the right line." Still more should we degrade the "Way" now-a-days when heresies and heretics are like weeds on a plain and evit principles and contemptible opinions are like the fallen leaves of a forest, were we to reply to each one. Recently I was astounded at the words of a philosopher: "The way comes not from Heaven," said he, "it was invented by the sages. Nor is it in accord with nature; it is a mere matter of æsthetics and ornament.[25] Of the five relations only the conjugal is natural, while loyalty, filial obedience and the rest were invented by the sages and have been maintained on their authority ever since." Surely among all heresies from ancient days until now none has been so monstrous as this."

The listeners at this spoke together and laughed, and the Old Man said:—

"You know Sotōba's[26] parable about the sun? A man

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[24] Mencius, Book III: Pt. II., Chapter IX. The quotation is not verbal.

[25] So from the beginning, because of the stress laid on rites.

[26] Sōtōba 蘇東彼 was one of the most famous of the Chinese literary men. He was of the time of the Sō (Sung) dynasty. He was of the orthodox school, and, was statesman and poet as well as philosopher. Mayers, p. 190.

born blind once asked: "What is the sun like?" and was told: "It is round like this gong," the speaker tapping the gong as he spoke. Oh! It has a voice! the blind man thought. And another said, "It gives light," and put a candle before his eyes. The blind man touched the candle and thought: "The sun is long and slender!"

So is it with most men. Though they read books they are in the dark as to principles, and with open eyes they are blind in heart. And their much thinking is like this blind man's study of the sun. How can they fail to err! It is not necessary to discuss such opinions: it would be like discussing good and evil with men who have no hearts. Those who argue with them are like unto them.

I know the origin of such notions. These men are mere students of the letter. They like to hunt through a multitude of books but do not establish their hearts upon the classics. They study words and commentaries but do not seek the profound truth. They are ignorant of their own darkness and are given over to learned vanity and the love of empty praise. So has it been since the time of the Min. These men desire high things, revile the former superior men and set themselves above the scholars of the past. But the wise man sees that their learning is "remote" and that they are intoxicated with the poison of Jun and So[27] and that their style is a mere culling of the ornaments of Ori.[28] With their heretical learning they declare that the "Way" is not from Heaven. Testing it with their own base hearts they say that only the conjugal relation is

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[27] Jun and So 荀子 莊子 Taoist writers. Jun was distinguished as a scholar and statesman. He committed suicide A.D. 212. So is the famous Chang, author of "The Divine Classic of Nan-Hua" (trans. by F. H. Balfour) Mayers p. 198 and p. 30.

[28] Writers notorious for the meretricious ornamentation of their style.

"natural." Their arguments are weak but many believe them and the world seems to fancy their base opinions. We shall grieve indeed that thus they may increasingly injure the minds of men, and the accepted truth. To prevent such evil, empty words were punished in the Book of Rites.[29]

But in such a world for me, without talent or virtue, to stop the evil is to prop up a great house with a single stick. Who would believe my polemic or my exposition? And how should I escape the reproach of not knowing the limits of my powers? The Tei-Shu philosophy is like the ceremonial robes of former kings; but this is like selling the garments of civilized men to savages. Though his philosophy is the celebrated music of the world yet now is it like Eikaku's Song of Spring[30] among a people of barbarous speech. As the Book of Poetry says: "Who knows me says: He has sorrow in his heart; Who knows me not says: Something he seeks; Blue, distant Sky! What man is this?"[31] So sang the officer of Shu in his sorrow over the downfall of the house of Shu, and such is my grief over the decay of the "Way."

THE FOOL'S MOUNTAIN.

But I do not seek collaborators in this present age. Evil customs and false opinions from of old have flourished like rootless things, and bloom, with noisy reputation, for an

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[29] 用禮 This reference to the punishment of "vain words" was not an empty threat. The Tokugawa government forebade all deviation from the Tei-Shu system in its schools, and the great provincial school went still further.

[30] The Historical Records. 史記

[31] The Shih King, Lessons from the States, Book VI. Ode 1 "On seeing the desolation of the old capital of Kau." Sacred Books of the East, Vol. III, p. 439.

hour. As the ages pass there is a sure return to the "Way" though to look for it in haste shows inexperience.

You know the works of Resshi.[32] He tells of a Mr. Fool who with his children laboured every day with pick and basket removing a mountain that stood inconveniently near his house. Mr. Wiseman jeered at the folly: "How can a few men remove a mountain?" But Mr. Fool replied: "I begin the task, my children continue it, their children after them and grandchildren's children labour on and finally it will be done." Thereat Mr. Wiseman laughed the more.

Such conduct men call silly and such men fools, and the critics are called "wise." But with such a "fool's" heart anything in heaven or earth can be done. And the men of wisdom with "Mr. Wiseman's" heart laugh at the Fool's mountain and accomplish nothing. For the world's folly is wisdom and its wisdom folly.

After my death comes a day that will settle this debate of an hundred years. Meanwhile men laugh at my round-about ways, but I am old and stubborn, determined to go on in this purpose to the end. You may class me with Mr. Fool and his hill.

THE OLD PRIEST'S TREE-GRAFTING.

But I have another thought. Beyond Shinobu-ga-oka is a village called Yanaka with a temple of the Shin-gon sect; and there I often played when a boy. Once I heard a priest tell this story:—

In the period Kan-ei (A.D. 1624–1643) the Shōgun came to Yanaka on a hawking expedition, and as he followed the birds, chanced upon the temple with only an attendant or two.

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[32] Res-shi 列子 A Chinese metaphysician of the age preceeding Confucius. Mayers p. 126. His writings were edited in the fourth century A.D. and take high rank among Taoist writings.

An old priest eighty years of age was grafting trees, and, with no notion of the Shōgun's rank, continued at his work. The Shōgun said: "What are you doing, Priest?" The priest thought the question foolish and replied shortly: "Grafting trees." The Shōgun laughed: "Such an old priest will not live to see them grow. What is the profit in your hard work?" The priest returned: "Who are you that says such a heartless thing? Consider! The trees will be big enough to darken the temple in the time of future priests. I work for the temple, not for myself alone." The Shōgun was filled with admiration. Meanwhile attendants kept coming up bearing the Shōgun's crest, and the priest recognizing his visitor fled in dismay. But the Shōgun called him back and rewarded him.

I am like this old priest. To the end of life I study the established principles, teach and write books that there may be the beginning of true learning in a future age. If I can help the "Way" one ten-thousandth, though I die still shall I live.[38] As one of old said: "Though dead the bones do not decay." So think I. I do not labour for myself at all. Believe me! Such is the Old Man's heart.

SEKKŌ'S DRAGON.

But deep would be my shame were I to be like Sekkō. From youth have I cherished the Sages and superior men, reading their books, but I know them only from books and

[38] Said Laotz: "He who dies but perishes not enjoys longevity." "Tau Teh King" p. 26. Chalmers' translation. "This is identical with the Comtist version of immortality; the man lives on in the posthumous results of his former works." Balfour. "Chuang Tsze" xix, note.

"O may I join the choir invisible
Of those immortal dead who live again
In minds made better by their presence:"

understand only the beginning of their true character. Were I to meet a living Sage who should prove different from those I have been cherishing, might I not hate him? I have such fears. And if I at all hate the Sages then all I say is false, a shame not comparable to the shame of hills and valleys. And how then should I wait for the coming age?

In the olden time Sekkō fancied dragons, painted them and spent days and nights in loving them. A real dragon heard of it and thought, if he is so devoted to painted dragons if I visit him how he will love me! So straightway he put his head through the window, but Sekkō fled panic-struck!

Among the scholars of the east and the west are some true men but most of them are proud and vain, desirous only of reputation and applause while professing to love the Sages. Should they meet a living sage they could not look him in the face. Their daily admiration is like Sekkō's devotion to dragons. Learning without the practice of virtue is like swimming in a field. In illustration of my meaning I will tell you a story of thirty years ago.

In Kaga I had a friend, a samurai of low rank named Sugimoto. While absent in Adzuma with his lord his son Kujurō, who was fifteen years old, quarrelled with a neighbor's son of the same age over a game of *go*, lost his self control and before he could be seized drew his sword and cut the boy down. While the wounded boy was under the surgeon's care Kujurō was in custody, but he showed no fear and his words and acts were calm beyond his years. After some days the boy died and Kujurō was condemned to hara-kiri. The officer in charge gave him a farewell feast the night before he died. He calmly wrote to his mother, took ceremonious farewell of his keeper and all in the house, and then said to the guests: I regret to leave you all and should like to stay and talk till day-break; but I must not be sleepy when I commit hara-kiri to-morrow so I'll go to

bed at once. Do you stay at your ease and drink the wine. So he went to his room and fell asleep, all being filled with admiration as they heard him snore. On the morrow he arose early, bathed, dressed himself with care, made all his preparations with perfect calmness and then, quiet and composed, killed himself. No old, trained, self-possessed samurai could have excelled him. No one who saw it could speak of it for years without tears.

At the beginning of the affair I wrote to his father: "Though Kujurō commit hara-kiri he is so calm and collected there need be no regret. Be at peace." But as Sugimoto read the letter he remarked: "A child often will be brave enough as others encourage it before the moxa is applied, and yet burst into tears when it feels the heat. My child is so young that I cannot be at peace until I hear that he has done the deed with bravery." As the proverb says, "Only such fathers have such sons." I have told you this that Kujurō may be remembered. It would be shameful were it to be forgotten that so young a boy performed such a deed.

But there is another reason also. Were I and all who study the words and mimic the actions of the ancient Sages to meet a living one different from our notions we should be like the child who cries as he feels the moxa applied. Surely it were shameful to study for years, attain the name of philosopher, and yet be less brave than this child Kujurō.

Therefore examine yourselves with this thought.

HENJAKU CASTS AWAY HIS MEDICINE-SPOON.

At a later meeting the Old Man said: I have not finished what I was saying the other day about learning true and false. To day I'll make an end.

Three classes of scholars attack Shushi:

1st, the school of Ōyōmei. Ōyōmei was a strong man, and although his arguments will not stand examination still

he was not wholly without reason. For in his day most scholars were busy with words and phrases and neglected self-examination. So he supposed that the "science" of Shushi was apart from righteousness and with his "intuitions" sought to examine himself. We approve his purpose. But Shushi's "science" does not neglect our intuitions but shows that they arise from "things." Apart from "things" can we seek our intuitions, after the fashion of Ōyōmei? But are not the classics, the ceremonies and music the teaching of former kings? What are these if not "things"? There are the six classics and the hundred deeds. Loyalty and disloyalty, truth and falsehood, we know their principles by "things." If intuitively we know all about reverence what need for the study of the ceremonies? And if by nature we are peaceful what need for music? Again, if intuitively we can govern our actions, making progress in loyalty and truth, if there is so short and easy a path why did not the sages teach it instead of their long and difficult "Way"? Then further, with what shall we employ these "intuitions" if not with "things"? "Surely" they will say, "in self examination and and casting away lust we will employ our intuitions." Let me illustrate: The knowledge of the five sounds is by the ears, so let us mind our ears and know the five sounds without hearing them! And the knowledge of the five colours is by the eyes; let us attend to them and know the five colours without seeing them! And the knowledge of the five tastes is by the mouth, so if we have a care for it we shall know them without eating! Is it not plain that though the knowledge of the five sounds and of the rest is in ourselves, yet the colours, sounds and tastes are in "things" and that we know them only as we listen, look and eat? Still less can we know the finer distinctions of light and deep in colour, of pure and impure in in sounds, and of delicate and harsh in tastes apart from things, for these differences are in the things.[34]

[34] Kaku-butsu-gaku I translate "science." It is thus explained:

Without study we know that we must love our parents and reverence our elder brother, yet by our performance of these duties do we investigate the principles. So is it with all the hundred virtues of the Superior Man. If we are not thus "scientific" but use our intuitions merely, we shall not distinguish good and evil. Since filial piety is the beginning of the hundred virtues. I'll speak of that a while.

All filial sons know such precepts as "In the morning reflect and in the evening consider."[35] Yet even that is not known to the rustics who do not lack loving hearts. Still more as to "nourishing" our parents, all nourish them, yet is there the difference between merely caring for the body and nourishing also the heart. And though all reverence parents, yet many do not follow the severe, strict way with such precepts as,—"Do not speak of old age before them,"[35] and "Do not speak angrily before them, not even to a dog or horse."[35] All this is included in filial piety, and though a Sage might fulfil this law without learning the particulars one by one, surely not so an ordinary scholar.

格物 "Distinction of things is simply the same as study because all study is a discriminating contemplation of things whether real or abstract. Certainly one must contemplate them until from them a principle 理 has been drawn....It may therefore be said, 格物 is a sifting of materials. But it is not natural science....it refers to men." "A Systematical Digest of the Doctrines of Confucius," p. 55. See the Great Learning, 4-5, "Wishing to be sincere in their thoughts, they first extended to the utmost their knowledge. Such extension of knowledge lay in the investigation of things" The Chinese Classics, Vol. I: p. 222, Legge's translation.

[35] These quotations are from the "Book of Rites."

[36] Book VII., Part I., Chap. XV., 1. The ability possessed by men without being acquired by learning is intuitive learning, and the knowledge possessed by them without the exercise of thought is their intuitive knowledge." Legge's translation. The Chinese Classics, vol. II., p. 332.

Such an one would not simply fail to fulfil the whole law, he would fall into actual transgressions.

We are not to cease obeying for the sake of study, nor must we establish all the laws before we begin to obey. In our obedience we are to establish its rightness or wrongness, examining ourselves as we read what the Sages say, tasting them carefully and reading them throughout. All the virtues are illustrated by what I have said. This is the scientific philosophy. Follow this course constantly and learn thoroughly these laws and at last you will not err, though you simply follow the dictates of your filial love. This is Tei-Shu's mystery, but only those who strive earnestly can know its flavour.

The expression of Mencius, "To know without learning is intuitive knowledge"[37] means that there is in man, before he studies, a heart which loves parent and reverences elder brother. Make that heart the foundation, study and we shall strengthen that power. Mencius did not teach that we can be perfect without study! This attempt to correct Shushi by casting aside the natural philosophy is not merely to misunderstand him. It is so to straighten the crooked that it bends backward.

2nd.—The scholars who reject the "ri-ki-tai-yo"[37] doctrine of Shushi and declare that it is not taught by Confucius and Mencius. But in reply we remember that Confucius said "The nature is alike;"[38] and Mencius said, "The nature is good"[39] and he further set forth the "yo-ki-ya-ki" doctrine which is not in the more ancient books. Confucius did not use these words of Shushi, but the scholars of the Sō did not offend against his principles. They knew none of these doubts and especially praised the

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[37] 理氣體用 (law, spirit, body, activity).

[38] Analects, Book XVII; Chap. II.

[39] Book VI, Part I Chap. VI.

discovery of what the Sages had not taught. The age of the Sō was long after Confucius and Mencius, and the scholars were busy with arguments and in the explanation of the "Way," and were not so careful to repeat the words of the Sages so long as their principles were not violated. When Shushi teaches that which is not in Confucius and Mencius, let us learn his meaning by careful thought and study. If there seem to be disagreement let us restrain our doubts, for if we declare that his doctrine does not please us and that it is opposed to the Sages the superficiality of our scholarship will be manifest. Such notions show shallow carelessness. I cannot argue all of these points but will speak in brief of ki and ri (spirit and law.) [40]

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[40] Book II, Part I Chap. II, 9–16. Dr. Legge translates "ki" 氣 "passion nature" and remarks.—"On 浩然之氣 there is much vain babbling in the Comm. to show how the 氣 of heaven and earth is the 氣 also of man." And he translates 13 thus, "This is the passion nature: it is exceedingly great and exceedingly strong. Being nourished by rectitude, and sustaining no injury, it fills up all between heaven and earth." The Tei-Shu school would perhaps question who is here guilty of vain babbling. If men like our author and his master Shushi understood the classics, the 氣 of heaven and earth may well be identified with the 氣 in man. Indeed I do not see how their philosophy can be otherwise explained. Dr. Legge elsewhere writes; "Khi (ki), or 'spirit,' is the breath, still material but purer than the Zing (essence) and belongs to the finer, and more active part of the ether." "The Yi King" p. 355 note, Vol. XVI "Sacred Books of the East." And again he writes,—"The name of the intelligent spirit is literally 'the knowing breath' . . . . . 'the breath' being used like the Hebrew ruach and the Latin spiritus." "I have adduced it to show how he (Confucius) held that, while man's body crumbles and returns to the dust at death, the liberated spirit, 'the breath' as he phrases it, ascends to a brighter state." "The Religions of China" pp. 119–121. In fact the Stoic 'pneuma' is the "ki" of the school of Tei-Shu, and so of the dominant system of Chinese thought to our day:—"The human soul, as

These scholars say: "In Heaven and Earth there is only spirit (ki), flowing through the four seasons; it produces all things and naturally ceases not. This is the Way of Heaven. Clearly is it as we see it. It is nonsense for Shushi to put above this spirit another formless thing called law."[41] Even in China there were formerly many scholars who could not rid themselves of these doubts though they professed to have studied carefully Shushi. They at least did not settle the matter at a glance like our Japanese scholars. Of course I cannot pretend to settle the mysterious question of the priority of ki or ri at a sitting, but I will talk a while, taking an illustration from Laotze.[42]

"Reckoning up the wheel there is no wheel; reckoning up the year, there is no year." Let us see, this is the rim, this the hub, this the axle, this the spoke; but the rim is not the wheel, nor the hub, nor the axle, nor the spokes. Yet if we cast these away the wheel goes too. But the law of the wheel preceded it and before the wheel was made the

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defined by the Stoics, is an inborn breath. . . . . It is a part severed from the Deity." "The latter pervades the world as an all pervading breath. . . . . The human soul is a part of the Deity, or an emanation from the same; the soul and its source act and react upon each other. The soul is the warm breath in us '. Opinions differed as to its life after the death of the body. Ueberweg's History of Philosophy, Vol. I, pp. 194–196, Eng. trans. See "Ki Ri and Ten" below.

[41] See the Chinese Repository, Vol. XIII, pp. 552,609 et seq. for a translation of Shushi's exposition of these words. Medhurst there translates "ri" immaterial principle and "ki" primary matter. McClatchie translates "ri" by "fate" and "ki" by "air" "Confucian Cosmogony." Eitel, above p., translates by "law" and "vital energy." I by "spirit," and "law," the former in the Stoic sense of puneuma. Griffith John translates "ri" "immaterial principle" and "ki" material principle. See my "Comment" below for a summary of Shushi's teaching.

[42] This quotation is not found in the Tao Teh King.

philosophy increases. Even Henjaku could not cure it. Still less can I, aged and talentless. I can only cover my mouth and flee in dismay.[47]

THE VIRTUE OF THE GODS.

When, one day, five or six students remained after the lecture to ask questions, one said:—I have a question. Many scholars explain 'Shin-tō' by saying that 'Japan is the Land of the Gods.' But their teaching is fantastic and opposed to reason. Since even the Sage did not speak lightly of the Gods[48] such men as we cannot understand it. We wish your help. We shall gain food for future thought. And as all were of one mind Okina replied:—

In the Book of Changes it is said, "The Sages formed their teaching by the Way of the Gods."[49] That is, their teaching is called 'The Way of the Gods' to manifest its Divine mystery, as we speak of the Way of Benevolence. But the 'Way of the Gods' is not a religion by itself. So I cannot accept that which is popularly called Shin-tō and that is exalted above the teaching of the Sages as our native religion. I do not profess to understand the profound reason of the Divinities but in outline this is my idea:—

The Doctrine of the Mean speaks of the "virtue of the Gods"[50] and Shushi explains this word "virtue" to mean "the heart and its revelation." Its meaning is thus stated

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[47] Henjaku (Pien Ts'iao) was the title given to a physician who lived in the State of Chao about the sixth century B.C. He was instructed in the mystic art of healing by a Sage possessed of magic powers. Henjaku dissected the human body. The Chinese theory of the pulses is derived from his discoveries. Mayers's "Manual" p. 172.

[48] Analects VII; 20.

[49] Appendix I: Sec. I: Hex. XX: 3.

[50] XVI: 1

in the Saden, "God is pure intelligence, and justice."[51] Now all know that God is just but do not know that he is intelligent. But there is no such intelligence elsewhere as God's. Man hears by the ear and where the ear is not he hears not though as quick of hearing as Shikō; and man sees with his eyes and where they are not he sees not, though as quick of sight as Rirō;[52] and with his heart man thinks and the swiftest thought takes time. But God uses neither ear nor eye, nor does he pass over in thought. Directly he feels, and directly does he respond. This then we should know is not two or three but just the virtue received from the one truth. Thus, in Heaven and Earth is a being of quickest eye and ear, separated from no time or place, now in this manner, communicating instantaneously, embodied in all things, filling the universe. Having of course neither form nor voice it is not seen nor heard by men. When there is truth it feels and when it feels it responds. When there is no truth it feels not and when it feels not there is no response. Responding at once it is, not responding it naturally is not. Is not this the Divinity of Heaven and Earth? So the Doctrine of the Mean says: "Looked for it cannot be seen, listened to it cannot be heard. It enters into all things! There is nothing without it."[53]

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[51] The oldest commentary on The Spring and Autumn. Book. III., Year XXIII, Part II., Dr. Legge translates, (Chinese Classics, Vol. V, Pt. I, p, 120) "The spirits are intelligent, correct, impartial." The word "spirits" is "shin" (kami) and in our passage can be rendered only by God or Gods.

[52] Rirō could distinguish a single hair at the distance of an hundred paces. Mayers, p. 119. Shikō had magical powers of hearing.

[53] XVI; 1. 3 Legge translates in the plural: "We look for them" the text of course having no distinction of number.

It is like Priest Saigyō's verse at the Shrines in Ise,[54]

"Though not knowing what it is, Grateful tears he weeps."

Are not his tears from his perception of truth? Before the shrine he stands, single hearted, direct, with truth; and to his truth God also comes and they commune, and so it is he weeps.

As the reflection in the clear water answers to the moon, and together moon and pool increase the light, so if continually in the one truth they are dissolved we cannot distinguish God and man, even as sky and water, water and sky unite in one. "Everywhere, everywhere, on the right He seems and on the left."[55] This is the revealing of God, the truth not to be concealed. Think not that God is distant but seek Him in the heart, for the heart is the House of God. Where there is no obstacle of lust, of one spirit with the God of Heaven and Earth there is this communion. But except by this communion there is not such a thing. Saigyō did not weep before he went to the shrine and by this we know God came.

And now for the application. Examine yourselves, make the truth of the heart the foundation, increase in learning and at last you will attain. Then you will know the truth of what I speak.

As thus he spoke all were silent, impressed by the great thoughts of the aged philosopher. They too shed grateful tears like the priest before the shrine.

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[54] Saigyō was a celebrated retainer of Yoritomo who became a priest. He died A.D. 1198.

[55] The Doctrine of the Mean, XVI:3; Legge translates, "Like overflowing water they seem to be over the heads, and on the right and left of the worshippers."

THE TRUTH OF THE SAGE.

The Old Man continued: Consider the saying, "Shun by doing nothing rules."[56] The truth of the Sage is Divine. When anything there is we cannot use this phrase "doing nothing." Not knowing what it is or why but only that it is most holy and Divine "grateful tears he weeps." When the Sage enrobed with folded arms is in the place of power[57] the empire honours him as the sun and moon, imitates him as one imitates his parents and communes with him more than with the formless God of Heaven and Earth. Wherever he goes there is reformation as the fluid shapes itself to the vessel. When Shun was a farmer all naturally sought the enlargement of their neighbor's fields, and when he was a potter all turned out pieces without flaws. His thought is Divine and accomplishes that on which his heart rests as readily as one turns his hand. When Confucius would work reformation he merely rested in the place and the result was attained, and when he willed to move men, all followed in peace. How far is this from the thoughts of ordinary men![58]

The Sages did not "do" wonders, but their truth cannot be hidden. When the Superior Man utters a word within his room the response comes from a thousand miles and still more is his neighborhood reformed. And if an evil word is spoken a thousand miles are changed, and still more

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[56] Analects XV; 4.

[57] Book of Changes, Appendix 1 Sec., I, I, 5. Doctrine of the Mean, Chap. XXXI.

[58] Mencius, Book VII., Pt. I Chap. XIII, 3. "Wherever the superior man passes through transformation follows; wherever he abides his influence is of a spiritual nature. It flows abroad above and beneath like that of Heaven and Earth." Legge's translation. This application of the influence of the ideal sage to the historical Confucius is remarkably at variance with the facts of his ill success as a statesman when alive.

is the immediate neighborhood corrupted.[59] Not instantly does it go a thousand miles, but as the wind moves from blade of grass to blade so does that done in private go from house to province and on, increasing, to the empire. This is the nature of things, the truth that cannot be hidden. So the superior man is busy with self-reformation and cares nothing for outward effect and ornament, yet are his hidden riches revealed like a silken robe worn beneath a worthless wrap. But the vulgar man cares nothing for self-culture and only for display, like him who vainly seeks to cover up decay which yet increasingly manifests itself.

Maijō reproved the king of Go: "If you would not that men should know, do not act; and if you would not have them hear, do not speak."[60] This is a celebrated saying, simple in expression but profound in meaning. To speak evil or to do it, thinking it will not be known, is to add interest to the principal and to bind a burden on the back which grows heavy day by day. At last its weight is great, how shall it be concealed? All sin, except the Sage, even the superior man. But the superior man does not attempt to conceal his faults, but reforms them in the sight of men. Error and repentance are without attempt at concealment and thus virtue is increased. The error of the superior man is like the eclipse of the sun or moon, all see the error and all are impressed by his repentance.[61] Though less than the truth of the Sage when men see such a face and hear such words they believe and follow, nor is any exertion necessary. This is the true "communion." It never can be rivalled by the leadership of wisdom, power or gifts. How partial the saying, "Good stays within the gates but evil goes a thousand miles." Both when real go everywhere.

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[59] Book of Changes, Appendix III: Sec. I: Chap. VIII, 42.

[60] 續文章軌範卷三放膽文十六枚 Zoku-Bun-Sho-Ki-Han-Ken-no-San. Ho-Tan-Bun-16-Mai.

[61] Mencius, Book II, Pt. II, Chap. IX., 4. Analects, Book XIX Chap. XXI.

MONSTERS ARISE FROM MAN.

A listener asked:—Since God is just and quick to perceive there may well be such communion with truth. But tradition from of old speaks of the appearance of evil things. Does reason account for them also? And the Old Man replied:

The Gods are the activity of Heaven and Earth, the good power of the In and Yō[62] and of course of the true "law." Man's nature is originally good but as it is individualized good and evil appear.[63] So too as God descends to man's world there is good and evil. For though the working through the four seasons of the spirit of the five elements of the In and Yō is of the right "law" of Heaven

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[62] The so-called male and female principles of Chinese cosmogony. See Mr. Haga's "Note."

[63] There is an ideal nature which is good. It is the same with the "ri," the "law," but when it is individualized, when it unites with the "ki-nature," both good and evil appear. This "ki-nature" varies, is thin or dense, is the air, the breath, the essence of the five elements, forms matter. It is in man as his "spirit" which may therefore be thought of as material, but matter might also be thought of as etherial. The spirit within us "feels" the spirit without and the latter "responds." So there is a revelation of the invisible, a theophany, but it is of the will of man and not of the will of God. p. 51 above. Evil seems to be confusion, the good powers appearing at the wrong times. The five elements are wood, fire, earth, metal, water. Perhaps the five elements would be better translated, "the five activities" manifested in the five elements. I am indebted for this suggestion, as for many others, to the Rev. H. Waddell, A. B.

The word spirit throughout this piece represents the character "ki" 氣. See the Journal of the N. China Asiatic Soc. Vol. II, No. 1, pp. 37-44.

and Earth and not of evil at all, yet as that "spirit" is scattered throughout the universe and confused there arise unexpectedly winds, heat, cold and storms. Thus naturally there are evil spirits which are known as they are felt by men. When with a righteous "spirit" we feel, the righteous "spirits" respond; and when with an evil "spirit" we feel, the evil "spirits" respond. And as both good and bad come from this "feeling and response" with the In and Yō we cannot refuse to call the bad also, gods. In Heaven and Earth is no place where these "spirits" are not. The "feeling" of the good "spirits" whether great or small is all of the pure heart. So in the empire have the good qualities of humble men been perceived miraculously; and, in a private station frost has been perceived in summer and Kantaishi "felt" the alligator in the evil valley.[64] Such events are extraordinary, but they are not to be doubted and are all caused by the pure "feeling."

I read a while ago, in the writings of Shinseisan, of the daughter of a farmer. Her father was ill and she prayed that she might suffer in his stead. Because of this "feeling and response" for one night many birds sang round the house, three great stars shone in the sky, lighting up the eaves like the moon; and in the morning the farmer was well. Seisan was the head of the village and knew the facts. He named the place,—"The village of great filial piety," and set up a memorial. This is a certain fact and an illustration of the feeling of which I speak.

But in a degenerate age man's heart is evil; for the most part he "feels" the evil spirits and monsters appear. The Sage did not speak of wonders,[65] of feats of strength, confusions or divinities, yet as their "law" is included in "the distinction of things," they must be mentioned.

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[64] Above note 14.

[65] Analects VII; 20.

In the Saden, Shinju of Rō thus writes of monsters:—"When men fear then monsters arise by the flickering flames of the spirit. Monsters arise from men."[66] This accords well with our science. When the fire is undetermined the flame flickers, dying down and flashing up, and there is a state of man's spirit which is like this. As the proverb says,—"Men wish to see the thing they fear." They cannot forget it and led by their fancies, as the flame flashes up and dies down, now they see it and then they see it not. At last so giddy is their spirit that they question their own identity and then, into that opening the spirits thrust themselves and show their forms in visions and monsters and things of evil. These come by the flames of the spirit, and cease by the "feeling" of the good spirits.

In the tales of Tō-Sō[67] it is said that at Lake Do-tei is a temple to the water god, where travellers pray before they embark. A merchant of firm faith, and mindful of his prayers as he crossed year by year, was drowned at last in a storm. Thereupon his son in grief and anger came determined to burn, on the morrow, the temple which had failed to aid in spite of prayers and gifts. But in his dreams the god appeared in fright and said:—"Forgive me and to-morrow you shall hear Divine music on the lake. I fear neither the

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[66] Dr. Legge translates,—"When men are full of fear their breath as it were blazes up and brings such things. . . . . If men give not cause for them they do not arise of themselves." "Chinese Classics Vol. V, Pt. I, p. 92. I do not understand "ki" here to mean "the breath" but the "spirit." The spirits (ki) around us are confused and undertermined and powerless against a determined mind but when man's spirit (ki) is undetermined and flickers like a flame then he is deceived by the evil "ki" and monsters appear.

[67] A collection of common stories of the dynasties Tō and Sō.

burning of the temple nor your wrath, but seek forgiveness since I cannot ward off the fixed determination of your mind."

This trifling story teaches that the gods fear a determined mind. Had the man been undertermined whether he should burn or not, now resolute and now irresolute, he had been cursed.

In the castle of Sumpu[68] was a fox called Uba. It would put a towel on its head and dance, no form being seen, only the towel waving in the air. As the towel was taken from the hand by the fox a rubbing was felt across the palm. And the young men would seek to hold the towel fast but could not. Ōkubo Hikozaemon,[69] however, held out the towel and the fox could not take it; for he had resolved when he felt the touch to cut with his sword both fox and hand. The fox knew his purpose and was powerless. When the heart of the samurai is determined there is no entrance and the fox can work no ill. Still more is this the case with Sages and superior men. For evil melts before the righteous spirits like ice before the sun. Those who practice evil arts against such men find their curses returned upon themselves. But good men are few and evil spirits abound.

And, further, men worship at profane temples and believe in Buddhism. As a shadow goes with a body so if there is strong belief even where there is naught we shall construct a being. Wonders are seen and folks are more and more deceived and the truth is lost. Trifles are thought to be of the gods and the Buddhas and are foolishly called their answers. The priests invent lies, deceive the people, assembling them together until the offerings of pennies are like mountains. These cheats are the thieves of the nation, a great evil to the empire.

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[68] The Tokugawa castle at Sur[illegible]n.

[69] A famous retainer of Ieyasu, [illegible]idetada and Iemitsu.

THE GOBLIN OF HIDAYAMA.

After a pause the Old Man continued:—This "feeling and response" of the gods is the thoroughfare of the spirit. If there is the least "touch" of the spirit, though it show not in voice or face the gods know it at once. But when in perfect quiet there is no mixture of the spirit the gods can find no place to enter in. This is the true nature (honbun), what I call the "self." The verse of Sha-rei-un [70] happens to set off my thought although he did not know the profound meaning of the "self:"—

"The perfect man exalts himself."

The Book of Changes says: "Heaven opposes not, still less does man or god." [71] This of course is true of man, and also of Heaven and the gods. So the Sage kings with this "self" were above the empire,—"The empire is only I, who can break my resolution?" The later philosophers put "self" apart from ten thousand, and in the midst of the multitude knew only "self."

Where then is this "self"? It is before all thought, the reality of the unmoved. Superior men cherish it, Heaven and Earth are given rank by it and by it all things are reared. From it "feeling" goes to God and there is nothing apart from it. As Shokosetsu says, "If there is not a thought even the gods cannot know; if not by self then not by anyone." [72] Here is a vulgar illustration which I heard in Kaga.

A sawyer was making boards in the woods of Hidayama when he saw a hermit with a long nose, and took him for a goblin. Thereon the hermit said: "Why do you take me for a goblin and hate me and wish me away?" The sawyer in extremity picked up his things to depart

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[70] 謝靈運 A scholar of the Min dynasty.

[71] The Book of Changes, Appendix, IV. Sec. I. Chap. VI: 34.

[72] 昭康節 A famous poet and philosopher of the Sō danasty.

when a board slipped by chance and hit the goblin on the nose. "You dreadful man," it cried, "I cannot understand your thoughts," and ran away. It could not endure the unpurposed hit. So it is that, "if there is no thought even the gods cannot know."

But ordinary minds are ever moved by the undetermined thoughts and fancies with which they are filled. So they are led by spirits, enchained by things and the "self" cannot assert itself. We must nourish the source of "self" if we would not lose it and first of all by getting rid of lust. Without lust, in repose, and without plans or thought, from this empty quietness alone, in accord with right reason does movement come, determined before all and thus after all is no fall. This it is to command the gods and not be commanded by them. Without voice or odour it is the foundation of the empire, a formless body. Without thought or act it is the source of all.[78]

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Unknown of men the origin of a thought in darkness and solitude is like the coming of spring while winter still is here. Just as the thought begins to come there is the distinction of right and wrong, as this year and next divides while winter remains. A thousand miles of error come from an inch. In the trifle is the separation of right and wrong, their division and their boundary gate. "Ceaselessly we must guard this gate" asking our hearts whether right or wrong is in our choice. Thus to forsake all evil and follow good is the beginning of the practice of our philosophy. Careless here, knowing good and evil only as shown in face and act, is to be too late. Struggle as we may we shall not attain.

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[78] Thought and act are of the ki, the true self is of the ri, see "Ki, Ri and Ten" below.

ALL "WAYS" ENTER BY DEEDS.

Many who had been absent for a time came again and excused themselves saying: We have been busy and so have been negligent. But the Old Man replied:

It is the fashion for scholars to say that occupation with the affairs of the world has made them negligent. I too have made that mistake. But the true difficulty is a want of resolution while we, unmindful of that, lay the blame on our occupation. This doubtless may interfere with our study of the books but "learning" is the practice of the "Way" of the Sages. True, we must know the "laws" if we are to act aright and these are learned not merely from books, though the study of the classics is to be put first. Read, learn the "laws" and then search them out in conduct and affairs; this is true knowledge, the knowledge that is the beginning of right conduct. The "Way" of the Sages is not apart from the things of every day. Loyalty, obedience, friendship, all the relations are in this "learning," and not a movement, not even our resting, is without its duty.

Ōyōmei's followers reproach the "science" of Shushi and say: Doubtless it is admirable, but how shall busy men find time to learn its universal laws? Thus they misunderstand Shushi to teach that first at our leisure we determine "laws" and only afterwards begin to practise them. Not so! We learn loyalty and obedience as we are loyal and obedient. To-day I know yesterday's shortcomings and to-morrow shall I know to-day's. This is the knowledge of the scientific philosophy. In our occupations we learn whether conduct conforms to right, and so advance in the truth by practice.

Big and little describe things and not principles, so everywhere and always may we learn philosophy, nor should we despise anything. For principles are decided by the

things of Heaven and Earth. But all in proper order, not neglecting the important things of every day that the laws of trees or blades of grass may be determined. In the "Way" of Heaven and Earth there is nothing which comes not from deeds. And where there is anything there is the rule. Just as with the six accomplishments we learn by practice and yet not without rules, so is it with the "Way." Though I have an intuition, if I know not the rule of its application I am like an unpolished jewel or unsmelted ore.

An old samurai thus taught his pupils. Be not samurai through the wearing of two swords, but day and night have a care to bring no reproach on the name. When you cross your threshold and pass out through the gate go as men who shall never return again. Thus shall you be ready for every adventure you may meet. All men of deep earnestness think thus. The Buddhist is forever to remember the five commandments and the samurai the laws of chivalry. But these are easy, being of limited application. But philosophy is of all things, and in all the scholar finds his duty. And especially three things must never be forgotten, the blessings of parent, lord and Sage. Parents bestow and cherish the body, not a hair even is apart from them and their love. The daimyō gives us all we have, and maintains us, not a chopstick save from him. And the Sage instructs us and saves us from the state of the brutes. Remembering these blessings the original nature is not lost, Heaven's reason is not destroyed and all the virtues are brought together. This is the mystery of our philosophy. Impress it even on your bodies.

But now-a-days young men seek only pleasure. Careless of their duty to parent and lord they fall into selfishness. And their elders and scholars know not the blessing of the Sages but are proud and desirous of fame, without a drop of truth. Did they know this mystery they would curb their proud spirits and become helpers in the "way" of virtue. But now, teachers and pupils laugh at the

truth of Shushi till head and stomach ache. Were they to hear my threefold mystery their stomachs would pain them to the point of throwing up. But all who truly know understand that it is not an empty and senile word.

BOOK II.—RIGHTEOUSNESS.

THE STUDY OF MARTIAL FORTUNE.

Returning from exercise some young men stopped one day, and the Old Man said to them: As your profession is that of arms constant drill is necessary; but good fortune is more important than skill since without it skill avails not. Mori Musashi no Kami was called the Demon of Musashi, so skillful and strong was he: but at Nagakute[1] he was killed instantly by a bullet, and what benefit was there in his skill and courage? Skill rests on fortune; so study this most earnestly. Your instructors teach you arms but they know not the study of fortune. Such as I can teach you that!

Then one replied: I do not understand this study of martial fortune. Surely it is beyond man's control. Could it be acquired by study all the world would learn! The Old Man shook his head: Yes, there is such study. Tell us of it then, the students said; and the Old Man went on:

Consider, all of you! Whence is fortune? From Heaven! Even the world says, "Fortune is in Heaven." So then there is no resource save prayer to Heaven. Let us then ask: What does Heaven hate and what does Heaven love? It loves benevolence and hates malevolence.

It loves truth and hates untruth. Its heart is this, that it forms all things and unceasingly begets men. Even when in autumn and winter it seems the spirit of death it is not so, but the root, the spirit of birth is gaining strength. So does the Book of Changes declare: "Birth is called change,"[2] and again: "The great virtue of Heaven and Earth is called birth."[3] That which in Heaven begets all things in man is called love. So doubt not that Heaven loves benevolence and hates its opposite.

So too with truth. For countless ages sun and moon and stars constantly revolve and we make calendars without mistake. Nothing is more certain! It is the very truth of the universe! When man leaves all else and is humane and true he accords with Heaven, it surely cherishes and embraces him. But with mere temporary virtue[4] comes no such revelation. We must always obey, being ever benevolent and injuring no one, being ever true and deceiving no one. As the days and months pass such truth appeals to Heaven, and Heaven helps so that even in battle we meet no misfortune nor strike against bullet or spear. This is the study of martial fortune. Do not think it an old man's foolish talk.

How sad is the condition of the world! Men seek only profit and hate their follows! With their wisdom they make a lying appearance and think it a skilful device for passing through the world. At last they are cast off by Heaven and how can there be any good for them? I have noticed prayers for good luck brought year by year from famous temples and hills decorating the entrances to the

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[1] In the war between Hideyoshi and Ieyasu, Rein p. 280.

[2] The Yi King, Appendix III, Sec. I. Chap. V, 29.

[3] The Yi King, Appendix III, Sec. II, Chap, I, 10.

[4] Mencius, Book II, Pt. I, Chap. II, 15.

abodes of famous samurai. But none the less have they been killed or punished, or their line has been destroyed and house extinguished. Or at the least, to many shame and disgrace have come. They have not learned "fortune" but foolishly depend on prayers and charms. Confucius said: "When punished by Heaven there is no place for prayer."[5] Women of course follow the temples and trust in charms but not so should men. Alas! Now all are astray, those who should be teachers, the samurai and those higher still! Whose fault is it then that this evil way wins the multitude? Okina weeps as he repeats the verse of Moshi,—"Watching the crow—on whose roof will it alight?"[6]

THE REWARDS OF VIRTUE AND VICE.

After a little some one said: I am much impressed with this new study of martial fortune, nor shall I forget it. But still I have my doubts. Do not men of humanity and truth meet with misfortune, while selfish, false men are happy? Gankai the saint died young and poor; Tōseki[7] the infamous robber was long-lived and rich. Do explain such facts.

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[5] Analects, III; 13.

[6] Book of Poetry, Part II, Book IV, Ode VIII; 3 "A lamentation over the miseries of the kingdom." These lines are "illustrative of the uncertainty of the writer's position in the future." Legge.

[7] Of Gan-kai Confucius said, "Unfortunately his appointed time was short," Analects, (VI: II); and, when he died,—"Heaven is destroying me! Heaven is destroying me!" (XI: VIII) and again,—"If I am not to mourn bitterly for this man for whom should I mourn?" (XI: IX,) Legge's translation. Tōseki had nine thousand followers and was eating a man's liver when visited by Confucius. The latter remonstrated with the robber, but was worsted in the encounter, at least according to "The Divine Classic of Nan-Hua" by Chuang Tsze, translated by Balfour, section "Che the Robber."

The Old Man replied:—The good are happy and the wicked miserable. This is the certainly determined and just law. But happiness and misery are not thus fore-ordained. They depend on circumstances. The Sages speak of the true law and not of the undetermined circumstances. If we would live long we abstain from drink and lust that the body may be strong. If in service we seek promotion we are diligent in duty. But some men who are careful of their health die young and some careless men live long. Yet surely, care is not in vain! So too some diligent men through misfortune gain no promotion and negligent men by chance have been advanced. Yet surely, diligence is not in vain! Were we to think care of the body useless we should spend days and nights in drinking and lust until at last we should be diseased and die. And were we to think diligence in vain we so frequently should neglect our duty that punishment and degradation would be ours. Care of the body is the "way" of long life, as is diligence of promotion. These laws are unchangeable. Again consider! When we make plans, do we leave all to chance or determine first the principles of our action? Of course the latter, and then we do not repent even though we are unfortunate. We cannot arrange for chance. But to leave all to chance and fail, that leads to repentance. Sin is the source of pain and righteousness of happiness. This is the settled law. The teaching of the Sages and the conduct of superior men is determined by principles and the result is left to Heaven. Still, we do not obey in the hope of happiness, nor do we forbear to sin from fear. Not with this meaning did Confucius and Mencius teach that happiness is in virtue and pain in sin. But the "Way" is the law of man. It is said: "The 'Way' of Heaven blesses virtue and curses sin." That is intended for the ignorant multitude. Yet it is not like the Buddhist hōben, for it is the determined truth.

THE VICTORY OF HEAVEN AND MAN.

Again he said;—When men are many they win from Heaven, but when Heaven decrees it wins. It is a famous saying: Heaven always wins, evil cannot contend with right. Men, when many and strong, may succeed for a time, yet only for a time while Heaven is undecided; afterwards it wins. Heaven is forever and is not to be understood at once, like the promises of men. Short-sighted men consider its ways and decide that there is no reward for vice or virtue. So they doubt when the good are virtuous and fear not when the wicked sin. They do not know that there is no victory against Heaven when it decrees.

Gankai died young. Tōseki lived long, for Heaven's decree was not yet formed. But now as we study the decree: Gankai indeed lived poverty-stricken and in obscurity, but his name lasts thousands of years with the sun and moon. Tōseki had a thousand followers and walked in pride but when he died his name perished before his body was cold; while his shame lasts an hundred generations, the memorial of many evil deeds. Was then Gankai's reward from Heaven small, and Tōseki's great?

And seldom is the award so late; generally it is at once. Sometimes it is delayed awhile and yet is received in person. Nowadays in Japan are many evil officials; some are punished soon, some after a delay; some are detected at once, some only by and by and some not until after death. For the collection and disbursement of taxes in town and province goes on unceasingly and a deficit is not perceived. So the wicked man is wise in his own interest and, by many devices, appropriates the property of the government to his own use that he may live in luxury and ease. While still undiscovered he congratulates himself upon his cleverness. And when others are detected he puts it to their want of skill, and grows in pride instead of being warned. But surely his evil wisdom makes some mistake. He overlooks something

deny both reason and things, the three relations and the five laws, and our own heart, what shall be the true heart? These heretics even must make our wonderful consciousness to be the true nature of Buddha.

The heart is like light. Fire is called light because it shines on things. The phosphorescence of sea and hill is like fire: yet lights nothing but dances in solitude, in waste places far from men. Shall we exalt it and call it a light Divine? Buddhism, separated from the "Way" of the five relations and the five virtues, moves men uselessly, without real connection with reason or affairs. Vainly it talks of Divine knowledge. In Japan before the Empress Suikō, and in China before the Emperor Mei [10] were no such men or hearts. It is all useless but for a thousand years here and in China high and low have felt its influence. Lords and retainers, parents and children have been deserted by men who have become priests. And others look on with longing and say,—"They have accepted the true religion." It is most contemptible, no matter what may be the purpose. Surely it is shameful! And the Old Man was silent for a while.

Reason comes from Heaven, he continued, and is in men. If we know it not in ourselves we know it not at all. This kind knowledge exceeds all former experience as we love our friend an hundredfold as we discover that he is bound to us by the ties of nature, is our lost father or brother. An abstainer knows that sake is sweet, but not as if he tasted it. And the sake drinker knows not the taste of mochi. The true philosopher knows the truth as the drinker knows the taste of sake and the abstainer the taste of sweets. How shall he forget it? How shall he fall into

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[10] In Suikō's reign, A.D. 593–628, Buddhism was openly adopted by the court in Japan. In the reign of Mei, (Ming Ti) A.D. 58–76 it received the imperial sanction in China.

error? Lying down, getting up, moving, resting, all is well. In peace, in trouble, in life, in death, in joy, in sorrow, all is well. Never for a moment will he leave this "Way." This is to know it in ourselves. But I have not yet attained to this, nor do I truly know the "Way."[11]

THE MORNING GLORY'S HOUR.

Matsunaga thus sings of the Morning-glory:—"The Morning-glory of an hour, Differs not in heart from the pine of a thousand years."[12] What profundity! Many have sung of the morning-glory, of its short life, of autumn loneliness and the vanity of the world. So Hakkyoi:—[13] "After a thousand years the pine decays; The flower has its glory in blooming for a day." That is pretty but it merely makes bloom and decay one. The ignorant think it profound but it is very superficial, like Buddhism and Taoism. Matsunaga's verse has other meaning, has it not? I think it means. "He who in the morning hears the 'Way' may die content at night."[14] To blossom early, wait for the rising sun and die, such is the morning-glory's nature received from Heaven. It does not forget its own nature and envy the pine its thousand years. So every morning splendidly it blooms, waits for the rising sun and dies. Thus it fulfils its destiny. How can we despise this truth the flower reveals? The pine differs not, but we

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[11] Man's true nature is "law," the eternal "reason" within him. And as "law" is the ideal benevolence and righteousness' these too are man's nature. It is therefore "good." But only when this truth is comprehended and obeyed does man "attain." Kyusō had not yet attained; he could say naught else for so does Confucius speak of himself. Analects VII; XXXII, XXXIII.

[12] Matsunaga. an unknown author.

[13] Hakkyoi. A famous poet of the Tō (Tang) dynasty.

[14] Analects IV, VIII.

learn the lesson best from the short-lived flower. The pine's heart is not of a thousand years nor the morning-glory's of an hour, but only that they may fulfil their destiny.

The glory of the thousand years, the evanescence of the single hour are not in pine or flower but in our thought. So is it with unfeeling things, but man has feeling and is the head of all. Yet is he deceived by things and does not attain to this unless he knows the "Way." To know the "Way" is not the mystic contemplation of which Buddhism speaks. The "Way" is so adjusted to all things that even miserable men and women may know and do it. And only as we truly know it can we truly do it. Otherwise even with practice we do not know, and even in doing it we find no profit. Though we are in the "Way" until death we do not understand. Truly to know and act is to be like fish in water and bird in forest.

Reason should be our life. Never should we separate from it. While we live we obey, and "Way" and body together come to death. Long shall we be at peace. To live a day is to obey a day, and then to die: to live a year is to obey a year and then to die. If thus in the morning we hear and die at night there is no regret. So the morning-glory lives a day, blooms wholly as it had received, and without resentment dies. How greatly differ the thousand years of the pine in length, yet both fulfil their destiny and both are equally content. Thus, "The morning-glory of an hour, Differs not in heart from the pine of a thousand years." As Matsunaga shows his aspirations in his verse so I in imitation; "By the truth received from Heaven and Earth, The morning-glory blooms and fades."

"Regret not what you see: Decay and bloom alike are morning-glory's truth."

"Hurting not, lusting not, This is the morning-glory's heart, Not different from the pine's."

The verses are wretched as you see. But never mind their form, take their truth.

THE EYELASH MYSTERY.

Said the students;—When we read we see only the surface and do not know how to apply the lesson to the world, but you find profound reason in everything. We do not understand that which is close at hand, it is as secret as the eyelashes.

And the Old Man replied;—Confucius said of the common words of Shun, "They show his wisdom": the Sage does not neglect the speech of the vulgar. "A boy thus sang:—When the river is clear I wash the strings of my cap; when it is muddy I wash my feet." And its meaning is, the Sage is not stopped but moves with the current of the world. Confucius commented thus,—"Because the water is clear he washes the strings of his cap, because it is muddy he washes his feet; so the washing is not of man's goodness or evil but the water by its clearness or muddiness brings it on itself. Consider!"[15] So are praise and shame, misery and blessedness all of self and not of others. Blame not men but heed thyself! Hear not unthinkingly even a common verse.

When young I met an old philosopher in Kyōto who told me stories of the past, and among them this of Ieyasu. He once said to his followers;—"Would you avoid misfortune? Here is advice for you in five syllables or in seven. Which will you have?" "Give us both," they said; and he went on:—"In five,—Do not look above, (ue wo mi na); and in seven,—Know thy own capacity (mi no hodo wo shire). Forget them not."

But men look above and know not themselves. Extravagant, proud, fond of adornment, they crumble their property and invite misfortune. A great daimyō had a karō whose income was ten thousand koku and on a certain day he went to the castle wearing a cotton robe dyed red. Get-

[15] Mencius, Book IV. Pt. I, Chap. VIII; 2-3.

ting wet *en route* he hung his robe in the sun to dry. The daimyō returning from the chase saw the robe and said, "Red fades in the sun, take it inside." But in the house of another great noble was an officer who gave ten gold ryō for the ornaments of his armour and remarked : "Weapons of war are most precious and from this expenditure my son and grandson will know my meaning." A third daimyō was thought especially wise. The son of his karō was fond of medicine cases and wore one, three coral heads ornamenting the string. His lord remarked to him :—"I see you are fond of medicine cases ; here is one that preserves the strength of the medicine for ever. Wear it," and gave him one whose beads were nuts. So all the officials renounced extravagance.

All this was sixty or seventy years ago but now everywhere is extravagance. We may well spend money on our weapons but luxury must be reproved. In the Ōsaka war great nobles and knights had only the simplest weapons and armour, while their houses and possessions were ruder still. Extravagance unrepressed destroys the empire. Its origin is selfishness, looking above and not knowing self. This is what Ieyasu meant. This disease, extravagance, is not merely individual and personal. It affects high and low. It leads generals to overestimate their own powers and despise their adversaries. So they lose the empire and themselves, like Nobunaga and many another in China and Japan. But Ieyasu did not become extravagant. He knew himself. Success did not make him proud, and so at last he ruled the empire. His syllables five and seven have profound meaning everywhere.

BENEVOLENCE THE LIFE OF THE SOUL.

One day, after study was ended, the talk was of benevolence and righteousness, and one of the company remarked : The heart of Heaven and Earth becomes man's heart.

Heaven's heart is to produce all things, and as this becomes the heart of man, love to his fellows will be the virtue of his heart. So is it that benevolence, the principle of love, is the virtue of the heart. And with this virtue are all the others, for they are included in it and come from it. This have I learned from you. Benevolence means the heart which loves mankind and is chief of the virtues. Many teachers give the chief place to compassion, and if enough meaning is read into it we may agree; but this teaching that benevolence is the virtue of the heart is not that ordinary shallow commonplace. Why is it that righteousness, propriety and truth are destroyed when there is no benevolence, even though compassion be made the virtue of the heart? Talk to us awhile of this. And the Old Man replied:

I agree with you and have nothing new to say, but still I will speak a little in detail. Benevolence in the heart is like the vital spirits in the body, and as these are shown in the pulse so is benevolence shown in love. When the pulse ceases to beat man dies, and when the law of love is lost the heart is destroyed. Thus is benevolence the life of the heart. It lives with benevolence and pity. Naturally when we see our parents we love them, and naturally we reverence superiors; naturally we are humble in the presence of old age; naturally we respond to the story of righteousness and are ashamed as we hear of evil. But if there is no sympathy or pity the heart is hard like demon, or beast, or wood, or stone, and we have no feeling. How then shall we love or reverence, respond to righteousness or be ashamed at wrong?[16]

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[16] Our word benevolence by no means precisely represents the Chinese word "jin." Faber translates "humanity" and gives an excellent description of the virtue, "Doctrines of Confucius," pp. 71–75. But though "jin" is the characteristic virtue of man, and

Thus are benevolence, righteousness, propriety and wisdom all of the virtue of the heart. They are separate laws and yet all of this one origin, benevolence. Without it men may have indeed a virtuous appearance and activity, but they come not from the heart and are not true virtue or true law. For benevolence is the essence of virtue and the law of love.

Bravery even comes from benevolence and is of the pitying heart. War seems a violent "way," taking and killing, and compared with benevolence like black compared with white. Yet only when benevolence is its foundation is the warrior's bravery true courage. Only as chivalry, and letters too, and all spring from the heart and combine with benevolence are they true. With such a heart, even if we purpose not to aid our neighbors, still aid them we must and shall.

RIGHTEOUSNESS THE EDGE OF THE HEART.

Another of those present spoke :—We now fully understand that benevolence is the virtue of the heart, the law of love, and that in its perfection all virtues are included. But righteousness is singled out and put with it. Explain, please, this righteousness. So the Old Man replied :

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his nature, yet as characteristic too of the heart of Heaven and Earth, humanity is a term at once too narrow and too broad. As St. Paul, in 1st Cor. XIII., sums up all the Christian virtues in the word love, so does "jin" comprise all the Confucian excellences. It is certainly noticeable that the words should so resemble each other, and when benevolence and righteousness are set forth as the very essence of Heaven and Earth we readily exaggerate the likeness of doctrine. But thought his Chinese philosophy has no place for a personal God, yet these virtues are reflected in the operations of impersonal nature, its fertility and its regularity.

As are the In and Yō in Heaven, so are benevolence and righteousness in man. This is the teaching of the Book of Changes:—"The 'Way' of Heaven is In and Yō; the 'Way' of man is benevolence and righteousness."[17] And in the first figure of the Book of Changes the four seasons are all included in spring.[18] Though the spirit of autumn seems to destroy and kill, yet really it strengthens the power that shall bring forth the verdure of the spring. So is it with man's "Way." The four virtues are all in benevolence but not indiscriminately, for without the rule of righteousness the living "Way" of the heart is hurt and benevolence is destroyed.

As I once said to a beginner: Righteousness is the "edge" of the heart. Shushi called it the "ruler" of the heart. Usually, with action, coming and going, taking and giving, the heart is filled up and cannot be just. Such a heart, stuck fast, even when learned, cannot be wise. It is without repentance and makes no rapid advance in virtue. So our action depends upon the "edge" of the heart. Thus did Confucius speak of the superior man: "Righteousness is his nature."[19] And he thus explains a passage in the Book of Changes: "He purifies his heart with reverence and his conduct with righteousness."[20] And again, he separates the man of true distrinction from the man of mere notoriety thus: "His nature is honest and he loves righteousness."[21]

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[17] Book of Changes, Appendix V, Chap. II; 4.

[18] Book of Changes, Appendix I; 1.

[19] Analects XV; 17.

[20] Book of Changes, Appendix IV, Sec. II, Chap. II; 6.

[21] Analects XII; 20.

Our lusts hurt the heart and are the enemies of benevolence and righteousness. Even those who are benevolent and know pity, whose nature is tender, become hard and lose their communion with Heaven when they are led by evil wisdom and by external things. Lusts daily increase like the insects which devour trees, and when the vital spirit dies the great tree is dead. As the edge of the heart is dulled, alas! righteousness disappears. Rust makes valueless the best cutting sword as the edge is dulled. So is it that the Confucian philosophy magnifies benevolence and teaches that self-conquest is essential to its attainment.

When Gankai asked Confucius about benevolence, the Sage replied: "Conquer self and return to propriety."[22] Propriety is the adornment of Heaven and Earth, man's rule for self-examination and instrument for victory over self. Gankai sought the method of self-government. Men who know not this cannot conquer self, though they strive strenuously. So it is that the Great Learning put knowledge of the truth before the reformation of the heart.[23] Though we know that the "Way" is benevolence and righteousness, yet we cannot attain perfection if we neglect propriety and knowledge. Thus does the Book of Changes speak of the virtue of the sage: "Knowledge is high, propriety is low; the height of the knowledge is Heaven, the lowliness of the propriety is Earth."[24] As the high increases so does the low improve. This is the "Way," complete doing at first and complete doing at last. This has been philosophy's great law from Confucius until now.

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[22] Analects XII; 1.

[23] The Great Learning, 4-5.

[24] Appendix III: Sec. I: Chap. VII. 36.

THE BROAD SPIRIT.

When studying penmanship I read the sentence of Imagawa, "If one of the four virtues is lost, the 'Way' cannot be fulfilled." Imagawa was not a great philosopher, but this saying is truly great. I well remember it yet. All four are important, yet is righteousness next to benevolence, as we may learn from Mencius' teaching of the Broad Spirit, "Very great, very strong, filling Heaven and Earth!"[25] Consider how so great a thing can come from righteousness. Endowed with the living spirit of Heaven and Earth man is naturally a broad being, but lusts dull the "edge" of the heart and the spirit grows small. So the broad spirit is from the "edge" of the heart. Without it, as the proverb says, "with one bound of an ox," we are wholly given up to self. Nor are we to be righteous all at once. Mencius says: "It is by the accumulation of righteousness."[25] The broad spirit does not give forth its power at once, with one thing or at one time, but day by day using the "edge" of the heart in accord with reason in all things great and small, important and unimportant, without any doubt, as with a sword you cut in two, deciding thus it fits well, this is the "Way," so is the broad spirit produced. Thus ceaselessly, this spirit continuing, ever it grows strong and at last the spirit so aids the "edge" of the heart that it unites with righteousness and the spirit is naturally very broad.

So when in cold weather two men at daybreak are about to rise, the sake drinker does not hesitate while the abstainer shivers with the cold. For the spirit of the liquor aids his "edge" of the heart. But the broad spirit comes from righteousness and yet helps the righteousness, a thing most wonderful!

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[25] Mencius, Book II, Pt. I, Chap. II; 11-16.

Last year I read in the Kam-bun-sho[26] of a dragon. The dragon is a thing most wonderful and Divine; and this one made a cloud with its breath and then rode thereon up to the moon and down to the depths. The dragon formed the cloud which aided it in its flight! But not unreasonably are we to use the spirit strength to make the weak strong, or we shall be like the men of So who pulled up the rice that they might help it to grow long![25] That is to injure the "Way" and prevent the accumulation of righteousness. It should be accumulated without definite purpose, yet constantly as day or night a man forgets not his important business. Neither forgotten nor unreasonably accumulated, this is this "edge" of the heart. As the philosophers have said, "Hold with reverence." Not too careful, or greater harm comes than from forgetting to have a care. "Like holding an egg in the hand," not forgetting or down it goes; not too tight or it is crushed.

Not too careless and not too careful. The heart is wonderful and Divine. Empty and idle it cannot be. It must have intercourse with men and act, or in its idleness useless things come forth; it considers things without root or dependence and is confused like hemp. Long ago in Kaga a samurai asked me of this control of the heart and I said to him:—The heart is like a horse of spirit and "reverence" is that which rides it. If the spirit is weak so are seat and hands, away the horse runs and we are thrown. This is the "forgetting." If we hold too strongly the mouth hurts and the horse cannot go. This is to "nourish unreasonably." Not only is he unable to go: his evil spirit is aroused, he balks and rears and is no benefit but an injury. Not too loose nor too tight, but carefully in the mean, then fast and slow he comes and goes freely obedient to my desire.

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[26] The writings of Kantaishi, p. 31 above, note.

So wrote I forty years since. Those to whom I wrote are now of the long ago.

Deeply moved was the old man as he spake these words.

THE PEOPLE, THE HEAVEN OF THE KING.

Once at the end of his exposition of the tenth book of the Analects, "He bowed to those who bore the tables of the census," the Old Man asked his guests: What is the meaning of the phrase, "The people are the Heaven of the king and food is the Heaven of the People"?

The people, replied one, are the foundation of the State; when they are obedient the State remains, but when they rebel it is destroyed. As its preservation and destruction are of the people the king must honour them as Heaven. And the people honour their food as Heaven, for it is their life and without it they die.

You have explained correctly the meanings, continued the Old Man, as both honouring agriculture. When Heaven begets men it brings forth grain for their food. If there are men there is grain and if there is grain there are men; if there is no grain there are no men. Nothing excels food. The farmers produce it and are entrusted by Heaven to the king who must honour them as he honours Heaven itself. Not one farmer may be abused. For this reason the census was received of old with honour by the king, and Confucius bowed when he met those who bore it. The people are to remember that they are entrusted with the production of this precious gift of Heaven and are to honour it as Heaven itself. They must not be idle, for their industry determines the land's prosperity.

In the days of the Sage kings all this was heeded. Taxes were light and when the crops failed there was such aid that the people were not scattered abroad. They lived at home without anxiety and gave their produce to the king

and no one failed to make "food to be as Heaven." Gradually their manners became the fashion with the officials and the city folk, and all were frugal and none lazy or luxurious. But later, in the time of the Shin dynasty,[27] the heart which made the people to be Heaven grew less, and cruel taxes were imposed until at last there was separation and rebellion. All was confusion and disintegration and the mob originated. Again from the time of the Kan dynasty,[27] though there was peace and safety, yet many were intent on gain and the great merchants lived like princes and in imitation the country folk too fell into extravagance and competed in costly amusements. Kagi[28] complained to the government, and as something of the heart that makes "the people Heaven" still remained, the Emperor repeatedly proclaimed that agriculture is the foundation of the empire, remitted the taxes and reproved the local officials. He exhorted to filial obedience, brotherly respect and industry. So in the time of Bun-Kei[29] lord and servant were frugal and the land grew rich. It was the best period after the times of the Sage kings.[30] So our study shows that when the fashions of the country extend to the capital it is well, and when the capital influenced the country it is ill, for in the country is simplicity and in the capital extravagance.

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[27] The Shin (Ts'in) dynasty reigned B.C. 255–209 and was followed by the Kan (Han) dynasty.

[28] A celebrated scholar of the "Han dynasty" who introduced various reforms. Mayers, p. 78.

[29] Bun and Kei were emperors of the Han dynasty and reigned in succession, B.C. 179–140.

[30] All good was in its perfection in the days of the Sage kings Gyō and Shun. But unfortunately, we know nothing of them or of their times historically. The golden age was already a thousand years in the past when authentic history began in China, the 12th century B. C.

Nowadays, so far as I hear, avaricious officials are many, and in the country too many who are outwardly obedient to the law amass wealth, are pleasure-loving, hide their faults, deceive the Government, injure their fellows and count all this shrewdness. At their feasts they eat only delicacies, gather women for song and dance, and spend immense sums in a day. They think it æsthetic; and when they see a man who is frugal and honest they ridicule him as "rustic" and unaccustomed to the ways of the world. As an individual can do nothing against the multitude, these fashions become universal and even the remote regions are extravagant and false. Alas! all the world praises extravagance and all the world desires money without which these lusts cannot be gratified. So those who are strong seize the wealth of the empire and its circulation is stopped. Gold and silver are scarce. But food grows every year, so it is cheap and money is dear. The samurai who are paid in grain must exchange cheap grain for dear cash and have not enough, while those who have money buy cheap grain with dear coin and increase their goods. But with limited coin their extravagance is unlimited and useful money goes for useless things. Money is less and less in quantity day by day and does not circulate. Rice grows ever cheaper, yet the poor country folk cannot buy it. The rich feast daily but the green-coloured [31] are ever at their side. The bad become robbers to save their lives. From extravagance comes poverty and from poverty theft.

This has not come about in a day. Until sixty or seventy years ago there was prosperity. Some were extravagant but the majority were frugal, for many old men of the former age still lived, men who had endured hardship as soldiers and had known no luxury even in their dreams. But their descendants, trained in their houses, think frugality rustic. The elders were without outer adornments but their

[31] The starving.

inner qualities were great. They loved labour and were loyal and sympathetic. But after their time the samurai with their hereditary pensions knew nothing of hardship in the times of peace. They desire drink and pleasure and know not its poison. Extravagant and vain and profligate, no wonder we are in such condition. Still worse are the money-getters and the givers of great entertainments. And the evil goes into the provinces. There remains even now something of the ancient customs, differing from the great towns. But the people are foolish and profligate, and some commit great crimes. Foolish and angry in their misery, some even rise against the Government. Still they are not cheats like the townfolk. They are naturally honest, simple, easily moved by blessings, quick to follow reason and satisfied with their daily food. When the officials remember the heart which makes the people Heaven, and modify the taxes according to circumstances and so treat the people that they may nourish parents and children without fear of death from cold and hunger, then the people are in peace. When the laws are made known showing the punishments for crime, forbidding extravagance, reproving the idle and dissolute, then the people admire and obey. As they become good their virtue passes to the towns. The townfolk are not the tenth of the countrymen; yet town fashions permeate the provinces. Were the countrymen content and prosperous, still more readily then would their fashions go throughout the empire conquering extravagance and evil. Without doubt extravagance would give way gradually to frugality.

THE SKIRT OF FUJI.

Of old it was said: "When the people are discontented they think of insurrection," so important is their peace to the empire. In the days of Ieyasu a certain samurai who loved philosophy was sent on a tour of inspection. Before starting he asked his teacher for advice and was told, "You will travel around the skirt of Fuji, study the plain on

which it stands. Such a mountain can stand only on so great a plain. Mountains stand secure because they spread wide out their base. With top big and base small, over they would fall. Would you now serve the Government? Care for the people. I have no advice to give but this." This is the meaning of that figure of a mountain standing on the earth in the Book of Changes.[32] The mountain rears itself on high but the base clings to the earth. The earth is its source. So are rulers to make the top small and the base great. Then is the empire at peace, like the mountain. But if the top is increased and the base diminished there is danger; it is a mountain upside down.

This is my thought:—In the towns are many evil men who set fire to houses and work mischief. For the greater part they are wanderers from the country who have come aimlessly to town because of the misery in the provinces. Should they return they would find no occupation and no place for their bodies. So their only resource is to rob and steal. Were the provinces unoppressed and the family relationship maintained, men would come to town only in exceptional circumstances. Should they find no work in town they would go home again. Had they friends they would not throw away their lives by committing crimes sure to be punished. Even the outcasts would go to their friends for aid. But now the provinces are in distress and all gather in the towns. And useless extravagance leads the fashion. The nobles, high officials and the rich put crowds of these fellows in livery. They gather in the long houses to drink and game. They drink until drunk, and by their carelessness the house catches fire and burns. The worst of them steal their master's money and fire the house to hide their misdeeds. The carelessness of the master permits such evils, but the real cause is the evil love of luxury. Stop the extravagant customs of the town and the provinces will prosper.

[32] Book of Changes. Appendix II., Hex. XXIII.

THE EMPIRE'S TREASURE.

But ever with a century of peace comes extravagance. That it may be replaced by frugality, honest and economical samurai must be given office. Mere laws and the machinery of government will not avail. So it is said: "Teach by example and they follow; by words and they accuse." When the great officers are righteous the mass of officials naturally follow with reverence and fear. When the great officers teach with words the subordinates quarrel and disobey. Though laws be many and increase yet is control difficult. The real and final fault is the unfitness of the officials for their places. Laws are necessary, but their efficiency is according to the men who enforce them. As Confucius said, "Government is by the man. With him it is complete; when he is destroyed it ceases."

The changes of man's heart are not according to a fixed system, but evil and good, falsehood and truth, are confused together. So the plausible excuses of Shokufu, though he seemed to make out his case, were not accepted by Chosekishi;[33] and the efficient general was not dismissed when he was accused of stealing eggs;[34] the seeming frugality of Kosonko in wearing a cotton robe was really evil extravagance, while the seeming extravagance of Kakushige[35] in the end was not to be reproved as wrong. We cannot govern a multitude of changing beings by unchanging laws. That is like playing a koto with its bridge made fast, like marking the side of the boat that we may find again the sword lost overboard. Not thus are changing conditions suitably met.

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[33] A councillor of Han Wen Ti, B. C. 179.

[34] Suin of Wei accused of stealing two eggs when a boy. Retained "since no one is perfect," Chinese Repository, Feb. 1851. p. 103.

[35] D. 122 B. C. He had been a swineherd and became a minister. Mayers, p. 90. He used all of his own property for others. Kosonko affected economy that he might increase his popularity.

Find the proper man and entrust the laws to him. Let him assert or modify, advance or retreat, using the laws according to the times, using them as not immovably bound by them. He should skillfully roll them along and not be rolled along by them. When all is entrusted to officials such as these, the Government is not obstructed, the laws are enforced, the people obey and there is continual peace. Jewels are not the treasure of the empire but wise men.

Reverently would I speak my admiration of the great Ieyasu.[86] Once when an office was vacant he said to his minister (karō): "I shall give the office to so and so. What is his character ?" But the karō replied, "I do not know. He does not come to my house." Ieyasu changed colour and replied, "I am to be blamed if unreasonably I ask your opinion of the character of each one of my many men-at-arms and if it is not your duty to know. But so and so has rank and wealth. He is unknown to no one. What duty have you more important than to know the leading men and give me information when I ask it? Should you reply 'I do not know'? Not know? I erred when I entrusted you with an office of such importance. Consider. The faithful samurai does not go familiarly to the house of his superior. You are to seek out the good men among them and know them that they may not be unemployed. That is your duty to me. When fine swords, daggers and articles for the cha-no-yu are spoken of you seek them that they may be shown to me. But the best of them do not serve the State. They are not essential. But I ever say that man is the 'treasure of treasures.' And you are so inattentive that you can answer me like this? If you know only those who call at your house you will corrupt the samurai. They will think they

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[86] Ieyasu is always referred to by his posthumous title, Tō-shōgū, but I have retained his well known name.

must flatter the men in power. My samurai, modest and virtuous, are the life-power of the state. If their hearts are soiled and they become shameless and spiritless in every thing, putting up with insults that they may save their lives, they will have no heart to fulfil righteousness. So with the loss of their vitality will the vigour of the State fail. Then the State will readily be overturned and destroyed. Fail not to remember what I say."

So did Ieyasu make wise men his treasure, and their righteousness the life-power of the State. Of all our rulers he stands first. I need not dwell longer on his lecture to the karō. In the Book of Rites provision is make for an officer whose duty shall be the choice of man. But in time the good old way failed and men were chosen only for rank, words, literary skill, and such like empty things. So has it been for generations. And in Japan from the beginning of the Kamakura times[87] lord and karō never thought of advancing men by the test of character. How such men would fear this sharp word of Ieyasu. All fear and follow him, So it is that from his time many men of high character appear who govern well. There is constant progress and all in the empire are at peace. This blessing is all from him. To worship such virtue day and night is not enough.

CUSTOM IS THE FIELD OF THE GOVERNMENT.

Naught else is so essential to the empire as custom. The ruler's authority is like Heaven and his fear is as thunder, who dare disobey? But as the proverb says, "Against the multitude no hand," so against custom is no victory.

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[87] The beginning of the Kamakura times was toward the end of the twelfth century, when it was founded by Yoritomo.

Mandates and laws effect a temporary reformation, but constantly do they yield and fail long to influence those beneath their sway. They permeate but a little way and are lost in the mass.

Custom is like a field and government like seed. Be the seed never so good, if the field is ill prepared it will not grow. Good laws accomplish nothing unless the customs too are good. First prepare the soil and then sow the seed. First reform customs if we desire good government. And the source of customs is the ruler himself. Let him govern himself and thus inspire those who are below. This is the unchanging law. If he govern not himself there is no model for the people.

When good or evil has hardened into custom there can be no immediate change. To go over to the bad is easy, but to become good is difficult. If reform is purposed, tie fast custom that there be no drift into evil. The ruler cannot accomplish it alone, but all the officials, small and great, must perceive his purpose, govern themselves and be examples to the people. Nowadays all know the frugality of the Shōgun, yet the extravagance of the lower orders ceases not. Such worthless men as I ever celebrate the virtues of the Shōgun, still more should all the high officials approve him. Doubtless they are not all slothful and yet cannot at once reform the customs which have long been decayed.

In the period Manji-Kwambun (1658–1672) quails were the fashion, and men of wealth competed for them and they became very costly. Abe Bungo no Kami, Tada-aki, fancied them and kept a cage ever by his side. A daimyō knew his fancy and buying one of highest price sent it to Abe by his physician. So the physician took it and said, "Be so kind as to accept it." But Abe merely replied, "I'll consider it." Then in a moment he called his servant and told him to turn the doors of the cages to the garden and open them. Out flew all the quails, to the surprise of the physician, who said, "Have they been so long with you that they will come

back again ?" "No," was the reply; "I have let them go. By the will of the Shōgun I have been promoted and should have no fancies. Unthinkingly I became fond of quails and now men bring them as presents. I'll care for them no more." That answer made the physician ashamed. It is difficult to give up one's fancy and there is no objection to the acceptance of gifts. But Abe forgot not the people of his master. Trifles become the fashion, influence one's own rule and must be carefully guarded. And the other officials of the time were also pure and free from extravagance; nor were they proud of their power. And as their customs influenced those below them, the people too became pure and honest.

So does custom generally pass from rulers to the people, but the opposite is sometimes true. When the source is pure the stream is clear, and when the source is impure so is the stream. But if mud heaps up at the mouth it dams the stream, and the impurity ascends even to the source. So nowadays the sons of wealthy merchants in company with samurai and officials, with rascals and dissolute townfolk, make brothels their home by day and night, and waste their time in play and drink. The custom penetrates higher circles, and even nobles and high officials go secretly to brothels and samurai are eager to be leaders in debauchery. This is the influence of the low upon the high. To amend it only good men should be made high officials and thus will the stream be purified at its source. Then next, the dissolute among the people should be searched out and put under arrest that the mud may be removed from the mouth.

And there are other evils. The common folk are far from the tribunals. They have the right to enter protest against wrongs but, ignorant of the ceremonies and without learned words, they cannot go to the fine office and minutely state their case. The minor officials do not wish to listen, are proud of their authority and ready with severe reproof for the smallest error, even of a word. So people dread

the trouble, even when their cause is clearly just. And with only one court the cases heap up like mountains, as petitions come in from the four quarters. The smallest affair takes days, the neighbors are repeatedly summoned as witnesses, until the whole village is involved and hates the whole affair. The expense is great, and so, for the most part, wrongs are the rather borne in silence. Robbers and sins will never be diminished in this fashion.

The distance of the court and the difficulty of the procedure are the source of the trouble. Small courts should be set up everywhere with good men in authority. They should be connected with the higher courts. The system of grouping five or ten houses together with mutual responsibility should be made more strict. Then bad men may be accused even though they do not actually violate the laws, They can be examined at once and released if their offence is trifling and sent to prison if it is great. All should be written out and sent with the prisoner to the central tribunal there to be judged. So there will still be communication with the Government in everything though it go not to the central tribunal first. As the smaller courts can decide at once there will be no delay. As the guilty cannot be hidden they will fear public opinion. They will not be influenced at once but still will naturally reform. But customs cannot be reformed while the tribunal prefers to be idle, and while it cares only when the laws are broken.

In my opinion the reform of evil customs, while a way roundabout and slow, is the only efficient method. It is evil customs that obstruct the Government and destroy the virtue of the samurai.

BOOK III. PROPRIETY.

THE EMPIRE, THE EMPIRE OF THE EMPIRE.

When spring was giving way to summer and the days grew long, the leaves of the trees forming bowers more beautiful even than the flowers of spring, the Old Man spread his books beneath the window, read history and reflected profoundly. His friends came to spend the day with him, reading and talking. In some connection, I have forgotten what, some one said, "We cannot forget the former kings."[1] And the Old Man remarked:—

The empire is peace. Men of rank and virtue may treat their parents as is becoming parents and their virtue as becomes virtue; and the common folk too may find pleasure in their pleasure, profit in their profit, and leisure in their leisure. Thus our years pass away. It is all the blessing of peace. Since Ieyasu, his hair brushed by the wind, his body anointed with the rain, with lifelong labour caused confusion to cease and order to prevail, for more than an hundred years there has been no war. The waves of the four seas have been unruffled and no one has failed of the blessings of peace. We common folk must speak with reverence, yet is it the duty of scholars to celebrate the virtue of the Government. Not standing too much on ceremony, I have been thinking much of late of one detail in so great a mass of virtue and would proclaim it to all, as now to you.

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[1] Book of Poetry—"The sacrificial Odes of Kau," Ode IV.

It is written, "Let the lord of the empire forget not that the empire is the empire of the empire, and not of one man."[2] Famous is that saying, and irrevocable for a thousand years! In China, excepting the Sage kings, most of the emperors who quieted confusion took the empire to be their own, and not the empire of the empire. When one of the emperors[3] at the beginning of his reign heard that his most famous general was ill at the war, he recalled him in haste and vainly sought his cure by the aid of physicians. Then at last the emperor prayed to mountain, river, Heaven, "Spare his life a few years, and take mine with his!" He would not that he should survive his general, and so he swore by his own life. I am deeply moved as I read this incident. Of such a ruler it is said, "An emperor in truth."[4] But those who long rule naturally come to think the empire given for one's own pleasure. They hold the empire fast lest some one take it from them, as a child holds fast its favourite toy. . With such a heart, even though the empire is taken, it cannot long be held, as Nobunaga and Hideyoshi[5] illustrate. They had no benevolence and the loss of the empire was of course. They were not fit to hold it. As men of old further said, "Treasure hides deep in the mountain: the man finds it who seeks it not."

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[2] From the Rikuto of the Shichisho. 七書 六韜

[3] Chu Yuen-chang, a plebeian by birth who overthrew the Mongols, A. D. 1368, and set up the Ming dynasty. "The Middle Kingdom," Vol. II, p. 176.

[4] So said the celebrated general Baen (Ma Yuan) of his emperor Kwang Wu Ti of the Han dynasty, who reigned in China, A.D. 25-58.

[5] Nobunaga, when at the height of his power, was treacherously killed, A. D. 1582. Hideyoshi then seized the power, and died A. D. 1598. After a time of war and strife Ieyasu overthrew all enemies and became Shōgun, handing down the position to his successors, forming the famous dynasty of the Tokugawa.

In the year A. D. 1586, after the battle at Nagakute, Ieyasu made peace with Toyotomi Hideyoshi. Hideyoshi sent a messenger to Hamamatsu in Enshu and invited Ieyasu to Ōsaka. But he refused to go, though repeated messengers came with urgent invitations. At last Hideyoshi sent his mother as hostage and thus urged consent. Then Ieyasu agreed to go. But his followers feared treachery and sought to dissuade him ;—" If you do not go it is true that Hideyoshi may renew the war, but your forces are the stronger and we are ready to throw away our lives. He cannot win though he bring an hundred times ten thousand men." But Ieyasu replied :—" It is as you say, and I do not accept his invitation because I fear him. But think how constant has been the war for generations without peace in capital or provinces until now. At last we have peace. Should I fight Hideyoshi, war begins again to the misery of the empire. If I meet evil, for the empire I shall die."[6] With profound admiration all heard these words and could urge nothing more. He well knew his danger, and when he started for Ōsaka entrusted his affairs to his ministers Ii and Honda. Such words of truth affect both men and Heaven; and as Heaven's decree was in accord with the hearts of men he took possession of the empire. As the Chinese emperor prayed by his own life for the life of his general, so did Ieyasu pray by his life for the peace of the empire. There was the same broad spirit in them both, not attached to treasures but to righteousness; yet did Ieyasu exceed the other.

Once when in a friend's house our host related this story of Ieyasu, and guests and host were affected to tears. Strategists and schemers may think it a plan for attaching

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[6] See Rein's Japan, p.280. The comparative merits of Hideyoshi and Ieyasu are still stoutly debated. Kyusō is, of course, a thoroughgoing partisan.

men to self, and it may so seem to those who ever study from a false point of view. That cannot be helped. It is not told for the sake of such.

REMONSTRANCE MORE DIFFICULT THAN THE FOREMOST SPEAR.

But ever in China and Japan alike most men when in power have thought the empire the empire of one man. They have been extravagant and have laboured for fame. But Ieyasu served the empire, not thinking it his own nor desirous of luxury. He made his rule strong and bequeathed it to future generations; his glory remains and the empire rests in peace.

After his great victory at Seki-ga-hara[7] some of his followers said to him,—"The empire is yours, gather treasures that your name may last. Hideyoshi built Dai Butsu."[8] But Ieyasu replied,—"So, Hideyoshi will be remembered by his Dai Butsu, but I care nothing for the transmission of my single name. I shall study the interests of the empire and leave it to my heir, that is far beyond building many a Dai Butsu." Doubtless their proposal seemed foolish to him. To conquer Korea, erect Dai Butsu and spend vast treasures is to injure the empire, though it be wonderful in the eyes and ears of fools. Already thoughtful men condemn and the name remains to future time disgraced. But the Nikkō shrines are reverenced in all the provinces. Do you not understand? This is the true, illustrious undecaying name ever to be admired.

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[7] The decisive victory by which Ieyasu won the empire, A. D. 1600.

[8] At Kyōto. It was destroyed by an earthquake, 1598. Quite a different view of the conduct of Ieyasu in connection with the Dai Butsu is given in Satow and Hawes' "Handbook," 1st. ed., p. 321. There he is represented as urging the heir of Hideyoshi to rebuild it on such a splendid scale as would exhaust his finances. And in connection with its dedication Ieyasu sought cause for offence and brought about the final downfall of his young rival. Ieyasu and his grandson are buried at Nikkō.

Ieyasu excelled all, but was not vain of his wisdom. On the contrary he approved the honest remonstrance of his inferiors. And indeed remonstrance may be put as the foundation of the wisdom of the ruler. Only the Sage does not err. If a man listen to reproof, though he err he is like a sick man who takes medicine and regains his strength. But however wise a man may be, if he will not listen to remonstrance he is like one who will take no medicine because his illness is slight and so the danger remains. But most strong rulers hate reproof and insist upon their own way. In China is the office of censor, but it is of little use. It is only a name, for honest men are readily removed and flatterers given office. When there is error there is no reform, nor remonstrance when the Government is bad, a grief that lasts from ancient days until now. It is still worse in Japan with its feudal government; the rulers govern by force of arms and inferiors must obey. Remonstrance ceases and sympathy with the people ends. Daily the evil grows, but those who know its cause are few.

Ieyasu was born in the midst of war and turmoil. He was sympathetic to inferiors and ever opened the way of words. Most admirable of men! Once in his castle, Honda Sado no Kami was present with some others. At the end of their business all withdrew save Honda and one other. The latter presented a writing to Ieyasu, who took it, asking, "What is this?" "Matters I have thought of much," was the reply, "and venture respectfully to suggest, thinking possibly one in ten thousand may be of use." "Thanks," said Ieyasu; "read it. There is no reason why Honda should not hear." So he began, and Ieyasu assented to each of the many particulars and finally took the paper saying, "Always be free to say what you think necessary." Afterwards when Honda only remained he said, "It was rudely done, and not a suggestion of value in it all." But Ieyasu waved his hand dissentingly. "Though it is not of great value still he had thought it over carefully and wrote

it in secret for my eye. His spirit should be praised. If he suggests anything of value I'll adopt it; if not, I'll let it alone. We should not call such remonstrance rude. Men do not know their own faults, but common folks have friends who reprove and criticise. They have opportunity for reform. This is their advantage. But rulers have no friends, but constantly meet with their inferiors who assent respectfully to every word. So they cannot know and reform, to their great loss. They lose their power and destroy their house because no one will remonstrate, and all they do is approved as right. Most essential is it that they be told their faults."

Honda remembered this and told it to his son weeping, as he spoke of the Shōgun's deep heart and broad humanity. And when the young man asked the name of the man and the purport of his paper, thinking to ridicule him, Honda reproved him sharply: "What have you to do with the man and his suggestions? Think of your lord's fine spirit!"

Afterwards, said Ieyasu to his samurai:—"A ruler must have faithful ministers. He who sees the error of his lord and remonstrates, not fearing his wrath, is braver than he who bears the foremost spear in battle. In the fight body and life are risked, but it is not certain death. Even if killed there is deathless fame and his lord laments. If there is victory great reward and glory are won and the inheritance goes down to son and grandson. But to grieve over his lord's faults and faithfully remonstrate when the words do not pass the ears and touch the heart is hard indeed. Disliked, distantly received, displaced by flatterers, his advice not taken, however loyal he may be at last he gives up the task, professes illness or retires into the quiet of old age. If he dares to risk his lord's displeasure in his faithfulness he may be imprisoned or even killed. He who fears not all this, but gives up even life to benefit his country, is highly to be praised. Compared with him the foremost spear is an easy post." To all ages should these words be repeated as a command.

SUGITA IKI.

So then the foremost place in the battle seems a place of difficulty but is not, and to remonstrate with one's lord seems easy, but is not. Lord and servant praise the foremost spear but I do not hear them praising him who loyally reproves. They should remember these words of Ieyasu.

In Kwan-ri Kan-ei, (1624-1643) the former lord of Echizen, Io no Kami, had a karō named Sugita Iki. He had risen from the ranks by his merits. It was his business to provide the funds for his lord's very expensive attendance in Edo. Not fearing his lord's wrath he was ever ready to reprove. And once it happened when Io no Kami was in Echizen that he went hawking, and on his return his karō all went forth to meet him. He was unusually happy and said, "The young men have never done better. If they always work as well they are certain of employment by the Shōgun in case of war. Rejoice with me!" So all congratulated him except Sugita alone. He said nothing, remaining at the foot of the line. Io no Kami waited a while wonderingly, and then said, "What do you think?" And Sugita replied, "With due respect yet are your remarks a cause for grief. When the samurai went with you their thought was this,—if we do not please him he may kill us; and they took final farewell of wife and child. So I have heard. If they thus hate their lord they will be useless in battle. Unless you know this it is foolish to rely on them."

Io no Kami scowled, and his sword bearer said to Sugita, "Go, please!" But Sugita scowled at him and said, "My task is not to go hawking with him and surround monkey or wild boar! Do not tell me what is of use!" So he cast aside his short sword, went to Io's side and said: "Kill me! It is far better than to live in vain and see your downfall! I shall count it as a sign of your favour!" So he folded his hands and stretched out his neck to the

blow. Io went to his apartment without a word. And the other karō said to Sugita: "What you say is true, but have a regard to the proper season. It was ill to mar the pleasure of his return." But Sugita replied:—"There is never a proper season for remonstrance. I thought it fitting to-day. I have risen from the ranks and doubtless look at things differently from you. My death is of no consequence." All listened with admiration.

Sugita went home and prepared himself for hara kiri, awaiting his lord's word. His wife had been with him from the time he was in the ranks, and to her he said: "I have a word to leave with you. A woman cannot be directly honoured by our lord, but as he has honoured me you have shared in it. You are no longer the wife of a foot soldier but of a karō. You have many servants. It is an infinite blessing he has conferred on you, is it not? After I am dead, remember this great blessing morning and evening and feel no hatred to your lord. If in your grief you hate him in the least and it appear in words, in the depths of Hades I shall know it and be displeased." In constant expectation he waited until late at night when there came a rapping at his door. Some one said: "His lordship has business for you. Come to the castle." "The time has come," Sugita thought, as he obeyed. But Io sent for Sugita to come direct to his bed chamber and said: "I cannot sleep for thoughts of your words to-day. So I have sent for you so late at night. I need not speak of my errors. I am filled with admiration at your straightforward remonstrance." Therewith he handed Sugita a sword as a reward.[9] At this so unexpected an event Sugita wept as he withdrew.

When I was in Kaga an Echizen man told me this. Sugita was such an one as Ieyasu praised. Such a karō has a station more difficult far than the foremost spear.

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[9] The direct bestowal of a gift by the hand of the daimyō was regarded as the greatest of rewards.

BAN DAIZEN.

Skillful flatterers are liked and find ready employment, but in matters of importance strong-hearted men are the only resource. I have another story for you, different from Sugita's.

During the winter war at Ōsaka, Katakiri Ichi no Kami, a follower of Ieyasu, was in the castle of Ibaraki in Setsu. Hearing that Shibayama Kohei in the castle at Sakae in Idzumi was in danger, Katakiri determined to send him aid. *En route* Katakiri's troops were surrounded by their enemies from Ōsaka at Amagaseki; and as those in the Amagaseki castle refused all aid, the troops were every one slain. The lord of Amagaseki was a child and the castle was commanded by generals owing allegiance to Musashi no Kami. Now Musashi no Kami doubted the loyalty of Katakiri to Ieyasu and therefore refused to succor his troops. But all the world believed that Musashi no Kami was secretly friendly to the enemy.

After peace was made Ieyasu examined this matter in the Castle of Nijō in Kyōto. Musashi no Kami was represented by his karō Ban Daizen, a man well known to Ieyasu. Ban Daizen made his representations, but the wrath of Ieyasu ceased not. "You have excuses in abundance," he said, "yet Musashi no Kami allowed his allies to be killed before his eyes. That is his wretched heart!" and he started to leave the room, but Ban Daizen cast aside his short sword, crept to the Shōgun's side and laid hold upon his skirt. He wept and cried,-"Oh! How merciless! Even if not your daughter's son, yet is not Musashi no Kami your grandson?[10] When can I speak if not now?" His sincerity effected his purpose, and the Shōgun said, "Very well! Go back at once and put Musashi no Kami at ease." Ban Daizen made obeisance with folded hands and bowed head, and retired.

The Shōgun said to those who remained, "Daizen's

[10] Through adoption.

father's name was also Daizen. He was a betto. When Musashi no Kami's father was young and was still called Shozaburō, he was in the battle at Nagakute. When his father and brother were killed he started his horse that he might go and die with them. But Daizen seized the bridle, stopped the horse, turned him about and fled with him. Shozaburō in great anger shouted, "Let go!" and for a quarter of a mile kicked Daizen about the head until the blood flowed from his face like a cataract. But Daizen kept his hold and brought Shozaburō off. Had he been killed his useless death would have ended his family, so the feudal house of Banshu is the work of Daizen. The son is like the father. No one else would do what he has done just now. Musashi no Kami is favoured in having such a servant."

And there is no other like instance. No other man of low rank has thus taken his life in his hand and approached the Shōgun in behalf of the innocence of his lord. And so it was that the Shōgun listened, relented and admired. Truly it was not an ordinary affair! And it illustrates too the great virtue of the Shōgun. He ever restrained his wrath and strengthened the faithfulness of his followers. He did not restrain and curb their courage, and they thought nothing of giving up their lives for his sake. Many wise and skilful nobles and generals have come to grief in the end because they curbed the faithfulness of their followers and depended wholly on themselves. The profound wisdom of Ieyasu is in striking contrast, and it was this that made his bowmen and spearmen the best in the empire.

But men say nowadays, "Tokugawa won because that was his fate and fate is irresistible!" His humanity and virtue were great and naturally he satisfied the decree of Heaven. But this alone does not account for his success. The strength of his troops explains his "fate." He cultivated their faithfulness. It is most essential thus to promote the faithfulness of the common people. How shallow is this talk of his resistless fate!

THE FIDELITY OF THE SAMURAI.

In the period Genko-Kemmu (1331-1335) many samurai were faithful unto death. I admire with tears a retainer of Hō-jō Takatoku named Andōzaimon Shoshu, the uncle of Nitta Yoshisada's wife. When Kamakura was taken by Nitta his wife secretly sent a letter to her uncle. He was a general fighting with the Hōjō and against Nitta. His soldiers were killed, himself was wounded and he was retreating when news came that Takatoku had burned his castle and fled to Tōshōji. Andōzaimon asked if many had killed themselves at the burning of the castle and was told "not one." "Shameful," he replied. "There we will die." So with an hundred men he went on to the castle and wept as he beheld the smoking ruins. Just then came the letter from his niece. He opened it and read,—"Since Kamakura is destroyed come to me. I'll obtain your pardon with my life." Very angrily he spoke, "I have been favoured by my lord, as all know. Shall I be so shameless as to follow Yoshisada now! His wife wants to help her uncle; but if Yoshisada knows the duty of a samurai he will put a stop to such attempts. He did not send it or agree to it. But if he did, if he meant to test me, she should not have permitted such an attempt to destroy my name. He and his wife alike are worthy of contempt!" With grief and anger there before the messenger, he wrapped the letter around his sword and slew himself.

Ah, what a man was that! How pure his purpose! Who can excel him?

But in recent years in the period Tenshō (A. D. 1573-1590) a retainer of Takeda Katsuyori named Komiyama Naizen is most to be admired. He was the favourite of his master, until at last they were separated by a quarrel and Naizen was condemned through false witnesses and dismissed from office. When the troops of Oda Nobunaga attacked the province of Kai, Katsuyori was defeated and fled

with forty-two followers to Tenmokuzan. When Naizen heard of the disaster he wished to help and met Katsuyori on his retreat. All the false witnesses, all with whom Naizen had quarrelled had fled, deserting their lord. Sorrowfully spoke Naizen: "My lord dismissed me, and now should I die for my country it will be a reflection on his judgment; but if I do not die I shall injure the fidelity of the samurai. Though I hurt his fame I must not forsake virtue," and he died with the forty-two faithful ones. As all the others had fled and these forty-two samurai alone held faithful to their lord without a thought of disobedience, they all illustrate samurai fidelity. But Naizen was preëminent among them, for he had been unjustly condemned and came expressly that he might die.

When Katsuyori and all his party had been destroyed, Ieyasu much admired the fidelity of Naizen and regretted that his worship should cease, as he had no children. So Ieyasu employed Naizen's younger brother, and before the battle at Odawara gave him a high command, speaking at length of Naizen's fidelity,—"Naizen was a model samurai, and though his brother is so young I have given him this command in token of my admiration of such loyalty." Truly that was praise after death, and the reward of loyalty.

THE HEROIC WOMAN HAS NO SEED.

When in Kaga I heard a man remark:—"All sins, great and small, may be forgiven on repentance and no scars remain, except two; the flight of a samurai from the post where he should die, and theft. These leave a lifelong wound which never heals. All born as samurai, men and women, are taught from childhood that fidelity must never be forgotten." Thereupon I continued:—Of course, and woman is ever taught that submission is her chief duty, and though she fully perform this high duty of fidelity, yet is she never to

forget this one thing. If in unexpected strait her weak heart forsakes fidelity, all her other virtues will not atone. In Japan and China alike have been women whose virtue has exceeded that of man.

The wife of Nagaoka Itchu no Kami Tadaoki, was the daughter of Akechi Mitsuhide, the retainer of Oda Nobunaga who killed both his lord and his lord's son.[11] In turn he was destroyed by Hideyoshi. Later Tadaoki, at the time of Seki-ga-hara, went to join Ieyasu in the east. During his absence Ishida Mitsunari[12] sent troops to Tadaoki's castle to seize his wife, but she exclaimed, "I'll not disgrace my husband's house through my desire for life," and killed herself before the enemy got in. Excited by her virtue, the two or three samurai who were with her fired the mansion and slew themselves, and her women took hold of hands, jumped into the fire and died. Even yet shall we praise that deed! The rebel Mitsuhide had such a child, scarcely equalled in China or Japan! As the proverb says: "The general has no seed," so I'll add,—The heroic woman has no seed.[13]

But a guest remarked:—"Not so; not having seed is still to have seed. Fidelity makes the nature of benevolence and righteousness its seed. Then without place or ancestor, without race, without the distinction of high or low, male or female, without family connection, good children come from evil parents, and evil children from the good."

The Old Man was greatly pleased and said:—True! I had thought only of man's nature, not of Heaven's. Such

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[11] Rein, p. 270 and p. 276

[12] Ishida Mitsunari was the chief opponent of Ieyasu, in the struggles following the death of Hideyoshi. Mitsunari vainly attempted to attach Tadaoki to his cause but Tadaoki joined Ieyasu. Rein p. 296.

[13] For a somewhat similar incident see Rein, p. 279. In the war of the restoration in 1868 some samurai women of Aidzu slew their infant sons and themselves when the castle fell.

virtue of women and the vulgar must be praised as Heaven's nature. Thus will the samurai be excited to virtue and virtuous hearts will be produced. Let me speak of Shidzuka, the uneducated concubine of Minamoto Yoshitsune.[14] She was a famous dancer in Kyōto, talented, beautiful and beloved of Yoshitsune. When he fled she went with him to Mt. Yoshino and then returned to Kyōto. Called to Kamakura and examined she replied: "I know so far as Mt. Yoshino. No further." She lingered there until the birth of Yoshitsune's child. Yoritomo desired to see her dance and commanded her presence at Tsurugaoka.[15] She refused repeatedly but was forced to comply at last. Yoritomo expected a song and dance for his feast, but she sang:

To and fro like the reel
Would that old times might return!
I long for the trace of the man
Who entered Yoshino's snow white peak.

Yoritomo cried out in anger: "You sing of that rebel Yoshitsune instead of celebrating the present time! It is a crime!" But at the request of his wife he forgave the girl. She cared not, but returned straight to Kyōto and lived in seclusion. Yoritomo's great power bent trees and grass but she feared it not. Her heart was wholly set on Yoshitsune and she excelled the samurai who died with him at Takadate.

I regret that the Kyōto scholar, Nakamura Tekizai, omitted Shidzuka from his account of the famous women of China and Japan, the Hime Kagami. Probably her low origin and occupation as a dancing girl accounts for her exclusion. But her story teaches an important lesson and must not be forgotten. The Book of Poetry says, "Take the herbs; uproot them not as lowly born."

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[14] Rein pp. 239-240. The great popularity of Yoshitsune brought upon him the fatal jealousy of his brother, Yoritomo, who was the first Shōgun.

[15] Tsurugaoka, a temple near Kamakura.

AMANO SABUROBEI.

Another day the Old Man said to the assembled guests: This fidelity reveals itself in the stress of strange events. Even in peace and safety pure-hearted samurai are to be highly prized, for they perfectly perform their official duties, and when the emergency comes reveal their fidelity. In peace and in war they are invaluable. Every wise and brave samurai may be given office, and he will have his use; but only the pure in heart must be placed in high position. Unless the heart is pure there is flattery and strife for power and fame, and apparent friends will hate each other. Then wisdom and bravery too will disappear. Timidly will precedents be followed, and each will so act that evil may not come to self. There will be no sign of anything superior, and duty will be slackly performed or wholly forgotten.

In the period Ei-roku (A. D. 1558-1570), Ieyasu was in Mikawa.[1] He established the laws and appointed three officers, Kōriki Yozaemon Kiyonaga, Honda Sakuzaemon Shigetsugu and Amano Saburobei Yasukage, popularly called Buddha Kōriki, Demon Sakuza and Pliant Amano; for the first was merciful, the second severe and the third neither merciful nor severe but guided wholly by reason. All three were of pure heart and there was no competition between them. No one sought to conform to the others, but each followed his own judgment. So Ieyasu gave them the same office and each went his own way independently, but as their government was righteous and as everything was well cared for, all men admired Ieyasu's clear judgment in the choice of men.

I do not know particularly the characteristies of Honda and Kōriki, but in the period Keichō (A. D. 1596-1614) Amano had the castle Kokokuji in Surnga, with an income of thirty thousand koku of rice.[2] He had an immense number of bamboos cut, piled up and ready for use, with

[1] Ieyasu was the Daimyo of Mikawa before he became Shōgun.

[2] A koku of rice is 5.13 bushels.

three foot soldiers in charge. Some men came from the estates of the Shōgun and stole some of the bamboos, one of the robbers being killed by the guards. The men who escaped complained to Ide, a local official of the Shōgun. Ide may have made a careful examination, but he seems not to have known of the theft of the bamboos, for he sent a messenger to Amano demanding the immediate capital punishment of the soldiers who had killed the robber; "For," said he, "the unauthorized killing of one of the people of the Shōgun is a crime." But Amano replied, "To kill a thief is according to the law. It is no crime. The solders killed him at my command. If it is a crime the guilt is mine." So he protected the guard. But Ide could not let the matter rest and appealed to the Shōgun, who commanded Amano to give up the man. But Amano replied as before, and obeyed not. Then Ieyasu said: "Amano is not a man who will sin; perhaps he is deceived. I'll examine into the affair again by and by," and he sent one of his high officers to Amano. And the officer said, "Even though you are in the right yet will the authority of the Shōgun be weakened if he is not obeyed. Draw lots among the three men and kill the one thus selected." Then Amano replied: "As you urge the weakening of the authority of the Shōgun I must consent. But," he added, "the spirit of the strong samurai does not consent to the killing of the innocent that one's self may be exalted. I may well give up my rank;" and he left his castle and disappeared.

In the time of the next Shōgun, a man in some place or other met an ascetic whom he took to be Amano, but whether rightly or not we do not know. No matter; Amano was truly a pure-hearted samurai. It was not right to slay the innocent and protect one's self. But were he not to kill the soldier he would disobey the Shōgun. Neither course was permissible. So he could not remain in the world, and gave up his income of thirty thousand koku and disappeared forever. That is without a parallel.

YUGE SO AND SO.

But pure-hearted samurai cease not to appear. In Kwan-ei-Shō-hō (A. D. 1624-1647) was a branch temple of Tentokuji, in Shiba, Edo, where always prayers were said without intermission. One day, at evening, as the priest went out of the temple gate he observed a man with a bundle wrapped in oil paper. He seemed a traveller and not a common man. When the priest returned from his errand there was the man still in the gateway. Thinking that strange the priest asked, "Who are you? Come in and rest." "I am listening to the temple prayers," the man replied, "for I like to hear them said. On your invitation I'll go in and have a cup of tea." So in they went and the priest inquired whence he came and whither he journeyed.

The man replied, "From Oshu. I once had a friend in Edo but I cannot find him. So I must find some place." And the priest rejoined, "Stay here to-night, it is so late." So he stayed, and the next day the priest asked him to remain until he should find some occupation. He thanked the priest and remained. It soon appeared that he was an educated man, and the head of Tentokuji called him and helped him and gave him various tasks about the temple, which were all diligently performed. By and by he was made a superintendent of many priests and became a person of importance in the temple.

At that time it happened that a nobleman who had retired from active life was making researches into the history of the past and sought scholarly samurai to help him, paying them good salaries. The people of the temple told him of Yuge and highly recommended him as especially informed about the past. But Yuge thanked the head of the temple when he was informed of it, and said, "I do not intend to enter service again, but your kindness entitles you to know my past." So he told the priest his real name and that he had been a retainer of Gamo Ujisato, and continued:

"Since Gamo was destroyed I have no heart for service under any other and purposed to spend my life as a beggar. With no design on my part I have become a recipient of the blessings of the temple, and now my one desire is to repay what I have received. But I find no means so to do." Then he showed the testimonial Gamo had given him for his services in the battle at Kunohe, and elsewhere, and the letters he had received from many nobles offering him employment. "All are useless now," he said, and put them in the fire.[3]

So he lived long in the temple. And in the year A. D. 1657, when Tentokuji was burned, Yuge said: "Permit me to help," and worked on after the chief priest and all the other priests had fled, saving the images, furniture and books. When all were safe he sent off the men who had been helping him.

Afterwards in the ruins of the main hall was found the body of a man, sitting with clasped hands like a priest. It was Yuge, and all the temple folk wept and grieved for him. But he had no desire to abide in the temple; he had merely waited for an opportunity to return the favours he had received. At the fire he found the opportunity he sought, and after working to the end purposely perished in the flames. How pure and holy was his heart!

When I was young I heard a story about another samurai. He was a retainer of the late Abe Bungō no Kami, but had given up his position and taken a house in Hachobori, Edo. I have forgotten his name. As the years went by he grew poor until he was in need of food. His landlord took pity on him and sent him food, but he became ill. Then his landlord sent him gruel, but he declined it as too

[3] Gamo Ujisato was one of Hideyoshi's famous generals. He was made daimyo of Aidzu and aided in the subjugation of the north (Oshu) and among his battles was one at Kunohe. He was accused of seeking independent authority for himself and was poisoned. He was a Christian.

ill to eat. Then he fastened up his door so that no one could enter and his landlord could only stand without and make inquiries. By and by the responses ceased. Then the landlord called the neighbors, broke open the door and went in. Seated on straw matting and leaning against his armour box with his two swords upon his knees, the samurai was dead. By his side was a writing. It expressed his appreciation of his landlord's kindness, with money to pay his rent and for his funeral. His armour was carefully arranged in its box, and with it three gold pieces. His swords were old but had gold ornaments. He had only the clothes he wore and there was not a pot nor any furniture. Nor was there any appearance that he had eaten for an hundred days. The landlord informed the officials, and they told him to carry out the written instructions. When Bungō no Kami heard the circumstance he was greatly grieved. The samurai had been a man of strength and always first when there was some great thing to do. I greatly grieve over his useless death by starvation ; and it would be wrong that such a man should remain concealed, unmentioned by any one.

THE TWO BEGGARS.

Nowadays customs are decayed and all men are selfish. But since man's nature is originally good, without regard to family or customs, there are men who know the right even among the beggars.

Ten years ago on the 17th day of the 12th month of the year U, Mitsu no to, of the period Kyōhō, (12th Jan. A.D. 1724) a clerk named Ichijurō, in the employment of a merchant of Muromachi, Edo, named Echigoya Kichibei, lost a purse containing thirty ryō as he was returning from collecting some accounts. He thought it had been stolen, but returned over his route looking for it carefully. At last a beggar met him and asked, "What have you lost? Is it money?" Overjoyed Ichijuro told of his loss and the beg-

gar said that he had found the purse and was seeking its owner. So Ichijurō exactly described its contents, money, papers and all, and the beggar gave it back to him. In his joy at the unexpected event Ichijurō offered the beggar five ryō, but the beggar would not take them. "But it was all gone and you returned it! Do take five ryō!" said Ichijurō. But the beggar persisted. "Had I wanted five ryō I should not have returned the thirty. But I did not think it mine when I picked it up. I thought that some one had lost his master's money and would be in trouble. Some men might have kept it, but I found it and desired to give it back. Now as I have returned it my business is at an end." And off he ran as fast as he could go. But Ichijurō took an itchi bu from the purse and followed him crying, "It is cold to-day! Take this for sake." So the beggar took it and said, "I'll drink the sake." And in answer to a question he said, "I am Hachibei, a beggar of Kurumazenshichi."

When Ichijurō went home and told his story his master wept in admiration and determined to give the beggar the five ryō. So on the following morning he sent Ichijurō and his chief clerk to Zenshichi, the beggar's master, to ask him to try and persuade Hachibei to take the money. But Zenshichi said, "The beggar Hachibei got a bu somewhere last night and called his friends together and had a feast of fish and sake. He drank a great deal himself and whether it did not agree with him, he died this morning." Ichijurō was astonished and asked for the body, and asked the man not to send it off or have it buried, So going home Ichijurō told his master, who sent for the corpse and expended the five ryō on a funeral, interring it at Muenji in Hongō. It was certainly wonderful that a merchant should thus be affected by righteousness. He had often been employed by the Lord of Kaga, and on the twentieth of the month Ichijurō went to Kaga Yashiki and told the story to the officials there, and they told it to me.

Hachibei was, I judge, no ordinary man. He had doubtless entered the beggar's guild because poor and homeless. He saw no resource in life, and having fortunately money for a feast for his comrades he thought it a good end and choked himself. Had he been a samurai or in authority he would never have used his power to take that which belonged to others. There are men whose name is splendidly samurai, but who in truth are beggars, but this man who was called a beggar was in truth a samurai.

In Kaga is a place called Nodayama, the burial place of the Maeda family. Their retainers, too, are all buried at the foot of the hill. At the festival of the Bon, candles are put at all the graves and wealthy folk build a miniature house over the grave and put a guard on watch. But for the most part the candles are simply lighted and left to burn themselves out. So bad men come, put out the candles and steal them. A beggar slept there wrapped up in matting. He forbade the thieves to touch the candles, saying, "These offerings at the graves of ancestors are not to be touched." They reviled him, saying, "A beggar has no right to speak!" Then he replied, "True, I am a beggar, for I do not as you." That was very interesting. His words were well chosen and his meaning plain.

As I constantly repeat, in both China and Japan men of fidelity cannot escape suffering. They may even lack sufficient clothes and food, and fall in field or stream unnoticed by the world. What is more lamentable? Surely it is our duty to reveal such hidden righteousness. There are many like Yuge, the beggar Hachibei, and this beggar in Kaga. Yet I cannot help those of whom I do not hear; but if I hear I cannot forbear to speak.

Of old when the emperor commanded that books of poetry be made, the names of dancing girls and priests appeared with the names of nobles and even of the emperor himself. That is one of the merits of our Japanese poetry, for poetry knows no distinction of rank. So does my talk

of fidelity bring in samurai of distinguished families with dancing girls and beggars. Fidelity knows no distinction of high and low. This is its virtue.

All present agreed with this opinion of the Old Man.

BOOK IV. WISDOM.

DARK IS THE FOOT OF THE CANDLESTICK.

When the dog days were half gone, some friends came to the Old Man's cottage on Suruga Dai to enjoy its coolness. The daily rain had ceased and the setting sun still lingered in the western trees. Cool the drops hung on tree and bamboo, and sweet was the odor of the lotus in the pond. The guests could not leave the scene, but stood on the balcony, and taking hold of its rail recited poetry, until at last in the gathering darkness white had melted into black. Then they went within and began to say farewell. But the Old Man urged them to remain and, consenting to pass the evening with him in talk, all sat down. As the lights were brought the Old Man had a thought, and pointing to the candles said, "Expound the proverb, 'Dark is the Foot of the Candlestick'."

So one took up the theme and said:—"That which everywhere is spoken of is not known at home. We foolish men explain it thus and Mencius sets forth the reason, 'The Way that is near men seek afar off';[1] they are forgetful of the beginning and seek the end, as the archer looks at the distant mark'". Then another continued:—"The verse of the nun Godo in works of the Radaikyō [2] is an interesting illustration of the theme;—'Seeking spring all day we see

[1] Book IV, Part I, Chapter XI.

[2] A Buddhist priest said to be of India (?).

it not. The haze rests on the sandal-prints along the ridges of the rice fields. Returning laughingly we pick a blossom of the plum and as we smell it, lo! behold! all the spring is present in the twig!' This is equally true of other things besides the 'Way.' In the time of To-shin[3] Kanon attacked Sanshin, and when Ōmō came forth to meet him cried, 'Why do not the heroes of Sanshin come forth?' So dark were his eyes since no hero of them all excelled Ōmō. Not to know the hero before one's eyes but to ask the hero for heroes, surely that excellently sets forth our proverb. So has it ever been in China and Japan! Great generals have sought distant enterprises and their renown has gone abroad even to the land of their enemies, yet have the enemies at home, within the hedge, remained unknown; so did Oda Nobunaga conquer east and west and yet, so dark was it close at hand, was slain by Akechi."[4]

Then the Old Man spoke:—You have completely taught the meaning of the proverb as to the attainment of righteousness, but you have used this darkness near at hand in a bad sense. I would use it also in illustration of the good. There is this further meaning in it. As the short poem of Kantaishi has it,—'Vain is the candlestick eight feet long. The short one two feet long is victor in giving light.' For it is dark below the long and light below the short candlestick, so as we wish to read and need a light close at hand we honour the short one, a foot or two in length. But it fails to illuminate the room and is useless in the great apartment filled with guests. So then, those which brighten the distance are dark close at hand. If from the darkness we see the light, it is all clear to our eyes; but if from the light we seek to penetrate the darkness, we can see it not. Thus to see the light from the darkness is to hide deeply and cherish profoundly one's own wisdom. Then if light shines

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[3] The Eastern Tsin, A. D. 317-419.

[4] Rein's Japan, pp. 269-270.

out from such darkness it is naturally strong and clear and reaches to a distance. This is true light. But when proud of intellect we labour with celerity and clearness to illuminate that which is close at hand, we look at the darkness from the light. Such light is weak, confined and superficial. It does not reach to the distance and merely illuminates our fingers ends. So we are like the unskilled go-player: we cannot see the end, and mistake at every move.

In China and Japan men of great and clear wisdom have been modest and unwilling to use their gifts. So says Laotz:[5]—"The wise merchant keeps his treasure out of sight and the wisdom of the wise seems folly." Not long ago Itakura Suwo no Kami was judge in Kyōto. His quick intelligence revealed itself in his face, and men were disconcerted as they saw his heart, so that neither prosecutor nor accused could fully state his case. So when Itakura heard a cause he shut himself behind screens, ground tea and was as if he heard not. Now he is famous. When reasons good and bad were stated, he was as a god in decisions and none failed to obey his words. Even yet there are countless stories of him, and among them all I like this one best: Once as he passed through a country district a child cried out, "There goes Suwo." As he heard the shout he said, "No one any where in the capital or provinces, child or adult, man or woman, does not know that I am the Shōgun's representative in Kyōto. No one calls me Suwo. But this child repeats what he has learned. The people of the house must hate me, and therefore call me Suwo." So he asked who lived within, and the following day summoned the master of the house and inquired, "Has any cause of yours been judged by me? Do not be alarmed. Tell me the facts?" After many excuses, as he could not get off, the man finally replied;—"In such a month and year a

[5] In his reputed conversation with Confucius. Chinese Classics Vol. I: Prolegomena, p. 65.

relative and I quarrelled about the division of my father's property. He was in the wrong but hired many false witnesses and gained his suit," and the man stated the particulars. So Lord Suwo told his men to examine the records and it was as the man had said. So the case was again reviewed and finally Itakura said, "The decision was wrong. But it is long past and cannot now be reversed. I'll pay you for your loss and apologize for my error." So he gave the man his money.

As the candlestick is long its base is dark, but its light shines far. So is the "Way" of the superior man dark indeed but grows daily bright. If the candlestick is short the base is bright, but the light goes but a little way. So is the "way" of the little man destroyed day by day. But your explanation is the true one; this of mine is apart. I have dwelt too long on this subject thoughtlessly, said the Old Man with a laugh. But the guests replied, "It is wonderful what meaning you can find even in a theme like this."

LAWS ARE LIKE A RIVER.

When the moon is full it wanes and the flower in full bloom scatters. We dislike the putting forth of full strength by anything. Seven or eight tenths of our strength should be used and the rest reserved. Should all be used, regret follows fast. Not wholly should a superior man give himself to joy nor to friendship without reserve. To accept hospitality too freely becomes rudeness and to become too intimate is to give offence. And the same principle holds with the government, as the vulgar saying is, "The government of the land must be like the stick that stirs the rice in the box, it stops not at the corners"; and where it does not reach is the place of freedom. So the Book of Changes teaches us that when the king hunts the animals are surrounded on three sides, that one side may be left open for their escape. There has never been a time when there were

not concubines and favourites, nor any country without evil men. Yet do the good win. Let ruler and ruled, high and low, show mercy and loyalty, then shall the foundations of the state be strengthened.

And thus it is that the ancient rulers exalt intelligence but do not praise acuteness. The two are alike and yet differ. Intelligence is the candle that illuminates the room, and though the foot is dark the room is bright. Acuteness is like a lantern, excellent for finding things just at hand but useless at a distance. The virtue of the ruler is like the candle and not like the lantern.

The Imperial laws are lenient and broad, like the river; they are not narrow and small like canals. And just because the river is so big and well known it is easily avoided; so deep and broad is it that it cannot be despised nor readily injured. But canals are many and small, narrow, difficult to avoid and easily injured. No one steps into the river by mistake, but constantly men slip into the canals. Still the government must not be mere leniency. Many details confuse the laws and make them cruel and hated, yet must they be severe according to times and circumstances. In times of perfect peace men float in lazy pleasure, and desiring luxury, security is thought most important of all, then with ease ancient evils cannot be escaped. Reform the government, increase the severity of the laws and make new the people's eyes and ears. The people rejoice at the accomplishment of the task: they cannot aid in its inception. They are foolish and look not to the good or evil of the state but only to their own. They are fault-finding and fertile in arguments.

When Shishan ruled Tei he strenuously reformed the evil customs, forbade extravagance in dress and equipage and made rules for the dwellings of the people. The rich in fear hid away their clothes and the landlords gave their possessions to the government, which redistributed them to their people. So the people sang,—"We hide our hats

and clothes. Our lands are taken and divided. We will not blame him who kills Shishan." But in a short three years extravagance had ceased and riot and crime had disappeared and then the people sang, "Let Shishan teach our brothers and children; Shishan increases our fields; should Shishan die who could take his place?" And Confucius said,—"Shishan is a superior man."[6] So the government loves and cherishes the people with leniency and severity. When lenient, the people grow selfish, and with severity comes reform. When severe, the people are harmed and then leniency must be invoked. Severity repairs the harm wrought by leniency, and leniency heals the wounds of severity. Thus is the government successful, As Confucius said, "Neither should be used by itself."

So the state reforms evils great and small and for the rest, ancient precedent should be followed unchanged. The carpenter may indeed forsake the traditions of his craft and form new methods for himself, but how narrow will be his rules and how poor his workmanship. With much pains and great thought he accomplishes nothing. In everything it is easy to follow precedent and difficult to invent new ways. There are ever men ready to show their ability in inventions; and though they may find something of value one time out of ten, yet will it even prove only of immediate use, and not of value in the future. They see that which is easy only and not the many difficulties. Treasure and strength are wasted in the end. Especially should the good laws of our ancestors and the tried institutions of the past be untouched. They are familiar to eyes and ears, and to be changed only at the risk of losing the people's hearts.

But the rule is not absolute. Some laws were es-

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[6] Shishan (Kung-sun K'iao) was chief minister of Cheng when lawlessness and disorder prevailed. When he had reigned three years the doors were not locked at night and lost articles were not picked up on the highway. Mayers, p. 221, Analects, Book V, Chap. XV.

tablished to meet peculiar needs. Such should not be continued but should be reformed. Otherwise society is harmed and government impeded in the name of the past. To reform such evils is really to fulfil the purpose of our ancestors. Not otherwise did they desire that government should be carried on and long for filial sons and grandsons.

As thus the Old Man set forth his argument with instances ancient and modern, the short summer night showed the coming dawn; the guests said farewell and took their leave.

TSURE-DZURE GUSA.

On another occasion when guests came to see the Old Man a copy of the Tsure-dzure Gusa[7] was seen by his side and he was asked, Do you like the Book? Kenko was witty and used language well in the description of emotions and scenery. "No," was the reply; "I only read it as a pastime to the children, while I am ill. I do not really like it." "Do you not agree to the general opinion," asked another guest, "that Kenko was a wise man?" And the Old Man replied,—Men who forsake the world fancy Kenko; men who like him care neither for fame nor gain. But I am not so sure of that. The Taiheiki says that he wrote a lustful letter for Ko no Moronawo; and the Entairiaku says that when he accepted the invitation of Iga no Kami, Tachibana no Naritada, and went to Iga he committed adultery with Naritada's daughter. Some of his poems were written at that time. So we see that he flattered the world and was lustful. He talked of deserting the world and despising fame and gain, but he lacked the firm purpose of the man who really deserts the world. He followed Buddhism; and so

[7] Kenko was an official who became a priest on the death of his Imperial master. Kenko died A. D. 1350. A translation of the Tsure-dzure Gusa may be found in The Chrysanthemum, Vol. III, by the Rev. C. S. Eby.

there are poems of lust and sin mingled with his talk of forsaking the world. Manifestly he was not a wise man.

Besides a few works on history like the Sankyō Ega Monogatari which record facts there are no books worth reading in our literature. For the most part they are sweet stories of the Buddhas of which we soon weary. But the evil is traditional, long continued and beyond remedy. And other books are full of lust, not to be even mentioned, like the Genji Monogatari,[8] which should never be shown to a woman or a young man. Such books lead to vice. Our nobles call the Genji Monogatari a national treasure, why I do not know, unless it is that they are intoxicated with its style. That is like plucking the spring blossom unmindful of autumn's fruit. The book is full of adulteries from beginning to end. Seeing the right ourselves become good, seeing the wrong we should reprove ourselves. The Genji Monogatari, Chōkonka and Seishōki are of a class,—vile, mean, comparable to the books of the sages as charcoal to ice, as the stench of decay to the perfume of flowers.

Long has Buddhism made Japan think of nothing as important except the worship of the Buddha. So it is that evil customs prevail and there is no one who does not find pleasure in lust. And the story books are full of the same things. Other writings contain for the most part low wit and vile lies, without a virtue. They are altogether worse than the Tsure-dzure Gusa. Take out the lust and Buddhism from that book, and scenery and the emotions are well described. There is a good deal that is silly, yet there is also reason and principles. Had he been learned in the "Way" of the sages he had not fallen into Buddhism. And moreover

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[8] The Genji Monogatari was written in the year A. D. 1004, "Things Japanese," p. 269. It quite deserves the sharp judgment here given. The first part has been translated into English by Suyematsu Kenchio. The Chōkonka and Seishōki are Chinese books.

he sinned through lust, so that his filthy name remains. Alas! Thus should we learn how dangerous are man's lusts.

THE DAIBUTSU PENCE.

What I ever hate is the conduct of Shigehira. It was not a disgrace that he was captured by the enemy, but while imprisoned at Kamakura he went into the drinking hall and had all sorts of talk with the dancing girls. When he was sent to Nara he asked his guardes to send him his beloved concubine. Surely these are things not to be done by a man! It was most miserable, but he felt no shame. But on the other hand he felt he had committed a great crime, and was in great fear because in obedience to his father he had burned the Dai Butsu at Nara! At Kamakura he confessed this and sought the forgiveness of Yoritomo; and again, when at Kyōto he met the priest Honen he mourned over it. Such repentance shows a heart dark beyond all help.[9]

Later on Matsunaga Danjo also burned the Nara Dai Butsu, and so strong a man as Nobunaga thought it a great crime. So when Danjo killed his lord Miyoshi Yoshinaga, and the Shōgun Nobunaga put these crimes together to his shame. How can Buddhism thus deceive the heart of man?[9]

But in the period Kambun (A.D. 1661-1673) Matsudaira Idzu no Kami Nobutsuna was in power and broke up the metal of the Nara images which had been honoured for a thousand years and turned Dai Butsu into pence, a great profit to the empire quite unparallelled. His strong wisdom was unique. With the advance of civilization since the estab-

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[9] Shigehira was a Taira Kuge. Honen was the instructor of the founder of the Hon-gwan-ji sect Shinran Shonin. Danjo became Nobunaga's follower, after he had committed these crimes.

lishment of the Tokugawa rule such men frequently appear. Should men like Shigehira hear of such deeds they would die of astonishment. All of Idzu no Kami's Government was good, but three things are preëminent: his forbidding retainers to die with their lords, his stopping the custom of sending hostages to the Shōgun and his conversion of the Dai Butsu into pence. By the first, an evil to future generations was prevented; by the second, sorrow was averted in all the provinces; and by the third a great error was corrected, an inheritance for future ages.

There were many such men in power, and their blessing comes to us in this continued peace. But Idzu no Kami was first among them all. He was sent to fight at Amakusa,[10] and after his victory he returned to Edo and went in to see the Shōgun just as he was in travelling array. As he entered, all congratulated him; and in the ante-room was Shinzaemon, to whom Idzu no Kami remarked as he passed through, "I have something to say to you when I return." So when he returned from his audience in the midst of a great crowd he said to Shinzaemon, "It was determined that the great bell at my headquarters should give the signal for the gathering of the daimyō for the attack. But I thought to myself, 'Suppose some fool or some rebel should strike the bell to-night!' so I had the beam taken away and brought to my side. But then I thought 'the bell can still be struck by something else,' so I had it wholly taken down and wrapped in a bags. As it turned out the rebels began the fight unexpectedly, and there was not time to get off the bags and hang the bell; so we were obliged to fight and whip them without its aid. Then I remembered your words, 'Be not over careful,' and thought this an excellent illustration." Though it was said in jest, yet he had not forgotten the word. An ordinary man would have had no thought at such a time for this. But Idzu no Kami showed the greatness of his heart by telling his mistake before them

[10] Amakusa,—the war againt the Christians. Rein. p. 308.

all. That is true wisdom. But men who desire authority and outward ornament are indeed very low, like frogs in a well.

YASUTOKI'S UNSELFISHNESS.

From the beginning of the Kamakura regime Hōjō Yasutoki was the best of all the men of these times.[11] Few can be compared with him. He once said to Mioe of Togano, "I am unequal to this great task of Government. How shall I cause strife to cease among the people?" Mioe replied, "Be unselfish." "But," said Yasutoki, "will the people be unselfish too if I am so?" And the priest replied, "No matter about the people! Try it and see!" So Yasutoki believed him, and when his father Yoshitoki died, gave the inheritance to his younger brother and kept just enough for his needs. His mother remonstrated with him, saying. "You have not kept enough;" he replied, "I inherit the government. I have enough. I wish my brothers to be rich." She greatly admired him, and as time passed all of his relatives came to be on the best of terms and all Kamakura admiringly followed their example. Mioe was a priest, but his words agree with the reply that Confucius made to Kikoshi,—"If you covet not they will steal though theft be praised."[12] And the government of Yasutoki shows that the words of the Sage are true.

While Yasutoki was in power he went every day to the office and laboured hard all day. He had a patient regard for the chief officials and was wise and impartial in his judgments, as is related in the Adzuma Kagami. Long ago

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[11] The Hōjō family succeeded Yoritomo as the real rulers of Japan. They were the Regents of Kamakura, ruling in the name of the "Puppet Shōgun" for 120 years. "Takatoki, the last of the line, became Regent at the age of nine." The Hōjō family was overthrown by Ashikaga Taka-uji and Nitta Yoshisada, A. D. 1334. Satow and Hawes's "Handbook," pp. 54-55.

[12] Kikoshi was troubled by the many thieves in his dominions. Analests XII: XVIII.

an old scholar told me this story of him: One day when hearing a case, while accuser and accused were face to face, the accuser suddenly said, "I had thought my cause good and so entered complaint. Now I see my error and will not add a word." There he stopped and Yasutoki in great admiration said, "You are beaten in your case but you are victorious in reason. I have heard many cases, but never before have I seen a man thus yield to reason. If I do not reward you whom shall I reward?" So he gave him a very special reward.

So it was that quarrels gradually ceased and the judges had leisure. I have forgotten in what monogatari this is, but it illustrates Yasutoki's justice, benevolence and truth. His work benefited his son and extended to future generations as they imitated his virtue and accepted what he had accomplished. Thus it was that Kamakura won the affections of the people.

Men think Tokiyori wiser, but I do not agree. He soon gave up his high rank, became a priest, liked quiet walks and thus saw the condition of the people. That seems admirable to those who do not know reason. He should not have deserted his post for the sake of the quiet of a temple. A born ruler should not thus injure virtue and lose the Government. His plan was petty, and "dark at a distance." Neither he nor any other at Kamakura at all equalled Yasutoki. When the Hōjō rule began, many men of parts gathered at Kamakura, but they were men of mere strength and bravery, without knowledge or wisdom. Shigetada is preëminent among them, for when falsely accused he refused to take an oath, saying, "I have never lied, and why should I take an oath?" So Yoritomo forgave him, but he was killed by the Hōjō and died most purely. The crimes of Tokimasa and Yoshitoki were against both men and Heaven and death were an insufficient punishment. Were it not for Yasutoki the Hojo had been destroyed before the time of Takatoki.

VOLUME V. SINCERITY.

THE MOON THE MEMENTO OF THE GENERATIONS.

When the year was more than half gone and the autumn scenery was come, the cool wind piercing the body, after long absence the friends gathered again at the house of the Old Man. They made the customary inquiries and were taking leave when he stopped them saying,—"The moon is very fine to-night. Do not go. Stop awhile and have some wine." So obediently they all sat down. And as the talk went on the people of the house set out food and wine, and the guests soon felt the influence of the wine and became interesting. One with his cup in his hand recited a verse of Rihaku[1] in praise of the moon, another capped it, and a third continued and a fourth, and last of all the Old Man;—"The men of to-day see not the moon of long ago: The moon of to-day shines not upon the men of long ago: The men of to-day and the men of long ago, Are like the flowing water. All are alike as they see the moon, With verse and wine their one desire is that, The Moon shine long upon the metal cask;" so he made an end of it. But the drinking went on, and as they drank still more until the mountains seemed to fall, the Old Man continued:

You all unite in praising the moon in verse and my heart is comforted as I see it. An emotion that ceases not arises, for the moon is the comfort of old age. I have many thoughts, and will give you one of them. When a child I was once sitting alone in the corner at the wine drinking on the fifteenth of the eighth month when a samurai, who was wholly illiterate, looked long at the moon and asked,—"How wide

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[1] Rihaku, a famous port of the Tō dynasty in China.

is it?" Then another like him said, "It is cut off from something. How deep is it?" All who heard it ate their tongues, and even as a child I thought it absurd. But really, are most men so different, as they praise the moon for its clear light and love its pure reflection and meet together to eat, drink and sing? And the poets ornament their verses as they see the moon and labour over their form, and yet after all, aesthetic as it all seems, they are merely amused with the appearance of the moon and know not its profound "feeling."

What I said of "the emotion that ceases not" refers to the love of the ancients, the study of their books as we know their hearts and the pain of separation from the world. It is the moon which lights generation after generation and now too shines in the sky. So may we call it the Memento of the Generations. As we look upon it and think of the things of old, we seem to see the reflection of the forms and faces of the past. Though the moon says not a word, yet it speaks. If we have forgotten, then it recalls the ages gone by. This verse of Rihaku is the best of all the poetry about the moon, for it lets the mere appearance go and unites past and present in one spirit, all "Are like the flowing water." Yet there is something wanting, for it does not speak of waiting for the coming age, and this is supplied in the ancient writing called So,—

"The men who are gone come not to me
The men of the future hear me not,"

and as I read it my admiration knows no bounds. For this is Kushi's[2] thought: "No one knows me, none of my own generation; and the men of the past who were one in heart with me, with whom I would speak, are beyond my reach; and the men of the coming age who will be of like

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[2] Kushi, the author of the couplet, (Ku Yuan) was a minister who committed suicide, about B. C, 314. Mayers, p. 107.

spirit, hear me not and know me not." So is it with every one who has a heart: it is not Kushi only who thus laments. I too see the moon with such a spirit and mourn. The present is the past to the future, and in that age some one like me will grieve as he looks upon the moon.

TO FORSAKE THE WORLD BUT NOT ONE'S SELF.

When the celebrated priest Saigyō went on pilgrimage through the east he came to Kamakura and went with others to Tsnrugaoka. There Yoritomo noticed the superiority of his company and called him to his house, asked him of horsemanship, archery and poetry. Without fear of the splendour of Yoritomo or of the presence of his famous followers, Saigyō freely uttered his opinions. Yoritomo greatly admired him, but was unable to detain him or give him anything except a silver cat, and this Saigyō threw to the children in the street as he went away. Nor was it known whither he went.

There was, at that time, a very bad priest at Takao named Bungaku. He was very proud of his power, which was given him at Kamakura, and he hated Saigyō's character and said, "If I meet him I'll insult him to his face." Once Saigyō came to Takao and Bungaku asked him to spend the night with him, full of joy at the opportunity. He said to his followers, "See! When he comes I'll strike him!" and waited with clenched fist. All were in troubled suspense, but when Saigyō came Bungaku's courage failed and he greeted him respectfully. So, afterwards, the followers said to Bungaku, "Why did you not strike Saigyō?" But Bungaku replied, "See the spirit of his face! He should strike me!" How apparent was Saigyō's high pure character and wonderful spirit! Our only grief is that Confucianism was not yet made known to the world and so even such a man knew not the truth. With a clear pure character, he disliked the ways of the world and became a priest. Truly that was lamentable!

To forsake parent and lord that one may save himself by becoming a priest is indeed to forsake the world; but instead of parent and lord it is not to forsake one's self. Unless we forsake our self we forsake not the world. The desire for fame and gain in the world, and the forsaking of the world in the hope of paradise, these differ as the pure and the impure, yet both alike are from the desire for one's own happiness. Buddhism regards our human relationships as "borrowed" and so teaches that parent and lord may be forsaken. Not so! If we are to desert anything, first cast away reputation, gain and pleasure! Then there will be no need to flee the world. But in the celebrated doctrine there is place for natural pleasure. It is not necessary to forsake the human relationships or anything. But to forsake these through the desire for paradise is a shameful exhibition of the craving for happiness.

There was once a woman who was ready to die of grief because of the death of her husband, and she refused to be comforted. But the priest reproved her: "You may well love your husband; Buddhism does not interfere with that, for it is most natural. But separated from him, with the marriage tie cut, in lonliness and for yourself to grieve, that is selfishness. It is a great increase of guilt. Consider this doctrine as you weep." So she repented and stopped her grief. It was wise advice, but the priest did not consider how it applied to himself. From of old all, high and low, men and women, who have clung to Buddhism have found the sole origin for faith in regard for their own happiness. Even the wise among them have not the wisdom of this woman. How have countless generations wasted their precious bodies! And the future too will show like waste! My grief I have put into this verse:

"For an hundred generations the universe flows on;
Literature and the 'Way' are now destroyed, Our thoughts are sad; Who knows? Above the heavens just the one round moon, Long shines upon the lasting grief of man.

The Way of truth is cast away! With whom then shall I speak? False principles and new heresies come forth day by day; The clear moon knows the grief of a thousand generations, And kindly shines upon the old white head."

The guests together repeated the verse, and just then the moon sank in the west and the morning broke; and all went home.

ECONOMY.

To the samurai first of all is righteousness, next life, then silver and gold. These last are of value, but some put them in the place of righteousness! But to the samurai even life is as dirt compared to righteousness.

Until the middle part of the middle ages customs were comparatively pure though not really righteous. Corruption has come only during this period of government by the samurai. A maid servant in China was made ill with astonishment and fled home in dismay when she saw her mistress, soroban in hand, arguing prices and values. So was it once with the samurai. They knew nothing of trade, were economical and content.

An old man told me this story of Hine Bichu no Kami. When he went to Korea he borrowed money for his expenses and on his return sent to return it. His creditor, Kuroda Josui, directed the servants to take off the flesh from some tai which had been sent in as a present and to make soup of the bones for his guests. As this severe economy was observed, the guests were filled with apprehension as to the probable demand for high interest on the loan. But after the wine when they offered to make payment Kuroda Josui would not take the principal. He was economical beyond expression, even with his fish that had been given him, even in the feasting of his friends, but did not hesitate to give an hundred silver pieces when his friend had need. That is an

admirable illustration of the character of the samurai of those days, simple and economical, yet unforgetful of righteousness and strong of heart.

Even in the days of my youth young folks never mentioned the price of any thing; and their faces reddened if the talk was of women. Their joy was in talk of battles and of plans for war. And they studied how parents and lords should be obeyed and the duty of samurai. But nowadays the young men talk of loss and gain, of dancing girls and harlots and gross pleasures. It is a complete change from the customs of fifty or sixty years ago. In those days I had a friend Kurando, whose father was a Kaga samurai named Aochi Unimi. Aochi said to his son, "There is such a thing as trade. See that you know nothing of it. In trade the profit should always be on the other side. It differs from 'go' in that if we win there is no peace in the victory." But now, men greatly rejoice if they make a profit by exchange. To be proud of buying high priced articles cheap is the good ortune of merchants, but should be unknown to samurai. Let it not be even so much as mentioned. I remember the remarks of Arai Chikugo no Kami some years ago:—Call no man stingy. If one is stingy of money still more will he be stingy of life. Stinginess is another name for cowardice." So he spoke as he expounded the books before the Shōgun. It is the truth. And samurai must have a care of their words and are not to speak of avarice, cowardice or lust.

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Nor must we waste our time. "Strength comes not twice. A day is not twice to-morrow. At the time for labour we must toil. Years and months wait not for man." Born with a love for learning, let us not think that the age is without virtue and the future without reputation, and that we perish as the trees and grass. Strive dilligently everyday. There was a Kaga man who was fond of the aestheti-

cism of Rikiyu[3] and practiced the tea ceremonies assiduously. When ordered to Edo he took his outfit with him and even in the inns hung up his kettle and made his tea. His associates remonstrated,—" Much as you like your tea, do take a vacation while en route." But he replied,—" A day en route is no other; it too is one of the days of my life! So it is not a day for omitting my ceremonious tea." He made no difference nor stopped a day.

So must scholars set their purpose on the " Way." It is not to be forsaken at all, and there is in all the life no day that is not for its practice. Going or coming, there is no place without it. We should not be in haste, lest we soon give it up. Not in haste and not in sloth must we ever purse the " Way."

A WORD FOR THE OPENING YEAR. CONCLUSION.

Swiftly the days and months pass by. Day by day increases the disease, old age, and labour is of no avail. It is the seventy-fifth year, and not so long had the Old Man hoped to live with the billows of old age rolling on. He was paralysized too, so that hand and foot were not easily moved and with difficulty could he get up or down. For three years the spring beauty of the garden had not been seen, but the voice of the uguisu from the tree-top came to his bed awakening him from his lingering dreams. Patiently did he remember the past as the perfume of the plum blossoms visited his pillow.

How blessed was he then that from his youth he had seen through the windows of philosophy the value of the passing years; that he had followed Tei-Shu and sought the manners of the Sages; that he had admired the literary style of Kantaishi and Oyōshu[4] and had learned haltingly to walk the " Way." What consolation was this for his aged

[3] " The Chrysanthemum," Vol., II., No. 5, pp. 198-200.

[4] Ōyōshu, Ou-Yang Siu, celebrated among the formost scholars and statesmen of the Sung dynasty. d. 1017 A. D. Mayers, p. 165.

wakefulness! Through so many months and years well had he considered the passing, changing world, with its alternating adversity and prosperity, its bloom and decay. Are they all dreams and visions, "the clouds that float above the earth"? Fortune and misfortune are twisted together like the strands of a rope.

Among it all only the "Way" of the Sages stands with Heaven and Earth. Past and present it only changes not. Men should wonder at it and praise. But the world knows it not. Men are in darkness as to righteousness, though wise in gain and lust. The "Way" is forsaken and customs deteriorate. Alas! Alas! but my low rank and feeble powers could not reform the customs or restore the doctrine; as well might a gnat move a tree or one dip out the ocean with a shell. Yet is it our duty as scholars to grieve over the world and reform the people. We cannot give this task to others. Why should aged teachers and men who are accounted scholars desire false doctrines, mix them with the truth and thus transform the "Way" of righteousness and virtue?

I cannot agree to that. They work and argue, please the vulgar and go with the times. Deplorable! As has been said of old,—"A corrupt learning that flatters the world." Let it be so! Let customs change! I alone will follow the "way" of benevolence and righteousness nor lose the pattern I have learned! This is the sign of the scholar who honours the "Way." In the New Year when men bless themselves with good wishes for a thousand worlds, I will set my heart on the "Way" of the five virtues only and will change not. This I think the rightful cause for congratulations. So I write,—

This spring too I go unchanged
Five times more than seventy seeking the "Way."

This year I have been busy, from spring to autumn, collecting and writing my various talks with my disciples. I finished it in the autumn, and though it is as worthless as the refuse gathered by fishermen, yet if transmitted

to our company it may be one-ten-thousandth help to those who study themselves. So at the end I wrote my New Year's verse, ending yet beginning, and thus reveal an endless heart.

Kyō-hō Jin-shi no Toshi, Fuyu Jūgatsu (Winter, December 1729). (signed) Kyusō.

NOTE ON JAPANESE SCHOOLS OF PHILOSOPHY.

By T. Haga.

[*Read 9th March, 1892.*]

In the introduction to his paper, entitled *A Japanese Philosopher*, and read before the Society, January 20th, Dr. Knox states that with the exception of a small school which follows Ōyōmei, Japanese Philosophy is that of Shushi. The correctness of this view of the matter is quite inadmissible. Of the opponents of the Tei-Shu philosophy I will mention a few, just as they come to mind: Jinsai, Sorai, Tōgai, Shuntai, Kinjō, Riken, Nammei. I cannot remember them all. In the writings of these men he will find the fundamental ideas, *sei*, *jin*, and *michi* (way), to be different from those held by Shushi.

Of the four writers selected by Dr. Knox as followers of the orthodox philosophy in this country, only the first and last can be said to belong to it, and of these the first is certainly not one of its best representatives. Hakuseki, like Kyusō, the subject of Dr. Knox's paper, was a pupil of Kinoshita Junnan, whose views, though they inclined him to the Teishu school, were still quite liberal and somewhat affected by the older learning, and Hakuseki became even more liberal than his master.

Yamazaki Ansai was indeed an 'orthodoxist,' narrow-minded and violent in his opposition to those who did not accept Shushi's doctrin es.

The other two names in Dr. Knox's list, have just been mentioned by me as among the opponents of the 'orthodox' philosophy, and so far were they from adopting Shushi's views, that they became the founders of the *Kogaku* school, or school of Ancient Learning. Jinsai was the first who systematically opposed the teaching of the Teishu school. His followers, including his distinguished son, Tōgai, exercised great influence. Sorai came a little later, and was equally opposed to Shushi, whom he wrote against very strongly and described as being a Buddhist. He spoke of Shurenki, Teishi, Shushi, and others as founders of the *ri* school, *rigakusha*, and also referred to them as *Sō-ju* (*So* dynasty school men). His particular school surpassed that of Jinsai in the production of well-known men, Shuntai, Nankwaku, and many others.

It would be a task beyond my powers to discuss fully and clearly the philosophy of the Teishu, Ōyōmei, and other schools. Indeed, it seems impossible to find English words at all equivalent to many of those in use in Chinese and Japanese philosophy. A word which to some degree seems to suit in one case, is found to be wrong when fitted to another. I can therefore only attempt to indicate some of the radical differences between the Teishu and Kogaku Schools, the latter as represented by Jinsai and Sorai, although these two differ among themselves.

Throughout the philosophy of Shushi there are the conceptions *ri* and *ki*. They are themselves self-existences, and are concerned in the formation of all things and are present in all things. It may perhaps be nearly correct to say that *ri* is the source of law and order, and *ki* is the source of natural existence. *Ri* we are told is the perfection of Heaven. It is in inanimate things as well as in man, and pervades all space. *Ki*, from its twofold character, is also called *in-yo*, and from its fivefold character, *go-gyō*. The conception of *in* and *yo* is that of duality, involving complementary or equivalent opposition of parts of one thing. It

may be, and has been, compared with many states of such opposition between similars, and among others therefore, with opposition of sex, but this has been brought out more strongly in translations than it usually exists in the original. Association of *positive* and *negative* (*polarity*), as used so largely in certain sciences, is all that is meant by *in-yo*. As *go-gyō*, the five divisions of *ki* are manifested in the categories, *wood*, *fire*, *earth*, *metal*, *water*.

Animals and things get only portions of *ri*, but man receives *ri* in full amount, and this becomes in him, *sei*, his real nature. He has thus within him the perfect mirror of Heaven and perfect understanding. There is no difference in this respect between a *seijin* or a perfect man and an ordinary person. To both, *ri* is given uniformly. But *ki*, from which is derived his form and material existence, and which constitutes his *kishitsu*, is different in quality in different men, and is sometimes clear and sometimes dull. He has thus a certain capacity due to *ki* or *kishitsu*, such as being intelligent or stupid, weak or strong; this is called *kirin*. *Sei* or man's real nature, although originally *ri* itself when it comes to reside in man, that is, in his *kishitsu*, becomes affected or modified by his *kirin*, or capacity through *ki*. Thus a second nature is formed out of *ri* or the original *sei*, modified or affected by *kishitsu*, and this second nature is called *kishitsu no sei*. He has thus his second nature called *kishitsu no sei* through which he acts well or ill. When a man does evil, that is the result of his *kirin* covering or interfering with *sei*, his original nature, and this action of his *kirin* is called *kishitsu no hei* (cover) or *kirin no kakawari* (interference or hindrance by *kirin* with the original *sei*, *honnen no sei*, or *tenchi no sei*). By this interference of *kirin*, *sei* or the original nature of man becomes clouded, as a mirror. Remove this corruption (*kishitsu no hei*) and the *honnen no sei* recovers its brightness, and man is perfect and can understand all nature.

Thus it will be seen that although the Teishu school

divide *sei* into *kishitsu no sei* and *honnen no sei*, these are both originally from *ri*, and this division can not be logically maintained in detailed application.

In this school, *sei*, fundamental nature of man, is *ri* itself, and in it the *ri* of benevolence, righteousness, etc.,—*jin*, *gi*, *rei*, *chi*, are naturally found. *Ri*, *sei*, and *michi*, ('way') are the same entity in different aspects, and it is called *ri* when spoken of as the order or law which pervades the universe, and *michi* ('way') when looked on as what man and all things must pursue. *Jin gi*, *rei*, *chi* are natural functions or parts of *sei*. Benevolence, righteousness, propriety of conduct, understanding, are not themselves *jin*, *gi*, *rei*, *chi*, but the *ri* underlying them. When benevolence is felt, that is what is called *yo*, the application of *jin*; while something prior to this feeling, when there is nothing yet felt, is called *tai*, the substance of *jin*. This is already natural to *sei*. Benevolence manifested in action is called the *hodokoshi* of *jin*.

Notwithstanding the distinctness marked out between *sei* (*ri*) and *ki*, the Teishu school make use, when explaining the *Ancient Classics*, of the term *kishitsu no sei* for the nature of man, *sei*, as affected by *ki*; and have then to use the phrase, *honnen no sei*, to express the pure fundamental nature of man. Again, we are told we cannot rightly discuss the *sei* of man without reference to the *ki*, nor the *ki* of man without reference to the *sei*. Now let us see how Jinsai handles these points.

Jinsai and his school say with the ancient writers that *ki* constitutes all things, somewhat in the same way that in Western philosophy matter is said to constitute all (material) things. But they deny that there is anything, any self-existence or entity, such as the *sei* of the Teishu school. All that led Shushi to invent the notion of the existence of *sei* is nothing but the manifested nature of things, their dispositions, powers, qualities, actions, and all that go to constitute their existence. Jinsai makes use of the term

ri, but only with its common signification of reason. The *sei* or fundamental nature of man does not differ much from that of animals, and only in possessing the germ of goodness along with healthy tendencies or impulses. With Jinsai, *sei* being merely a name for man's nature, *jin*, *gi*, *rei*, *chi*, become merely names for the several phases of conduct based on the possession of a good disposition—not for something self-existent, and already present before the mind feels its bent. When Mencius said man's fundamental nature (*sei*) is good, he meant no more than that it is his nature to be well-disposed. Without training men do good deeds through natural disposition, but unless cultivated and developed this disposition is overcome by evil passions and bad surroundings. It is in the nature of an infant to love its parents. Without premeditation, and from good disposition only, a man hastens to the rescue of a child that has fallen into a well. That is to say, he does so because it is his nature to do so, not because of the presence in him of something Shushi calls *ri*. Such a disposition, attended to, becomes universal benevolence or love, *jin*. Shame of one's self in wrong doing, and condemnation of it in others are the outcome of an instinct for righteousness, a disposition to righteousness, which duly cultivated becomes the conduct, *gi*. The faculty of discriminating between right and wrong is the instinct which urges to wisdom.

Jinsai finds strange confusion in Shushi's distinction between *kishitsu no sei* and *honnen no sei* when applied to the ancient classics, because in his version of the meaning of these writings he gives to *sei* one or the other of these significations, just as it suits his own views, and not because of anything to be found in the classics themselves.

Men of the Jinsai school argue: if merely by repressing *kirin* man becomes perfect, this should lead him to do nothing but contemplate *ri*, be composed, and meditate, as is taught so greatly by the Teishu school to be the means of restoring the original *sei*. If the mere removal of passion from the

heart be enough, why did not the *seijins* give up all their endeavours to teach the world the way, instead of only counselling men to resist their passions? If a man can become perfect by such means, why have there been so few perfect men? Effort in this direction is vain; we must try day by day so to act that the mind gets so accustomed to do right that no evil can affect it. When we have trained ourselves to do no wrong, even to gain the whole world, then only can we be fairly said to be perfect men. Not contemplation, but action is the way. The way is by cultivating and encouraging and extending the natural good tendencies.

But should every man do only that which seems right to him, great mistakes might be committed. Hence, in order to lead men to perfection, the *seijins* have, in the classics, pointed out the way—pointed it out, not invented it—which is to follow man's natural and uncorrupted disposition. Thus the 'way' which in the Teishu philosophy is *ri*, is a reality of man's life, and not some silent imperceptible existence independent of his actions, and outside his consciousness. To consider *jin*, *gi*, *rei*, *chi*, as each a form of *ri*, is like saying that the fire is in the flint and steel, or the sound in the bell.

Although to a certain extent there are a few men naturally wise, and a few hopelessly foolish, the perfect man differs from the ordinary man not so much by nature, as through habit and discipline of mind.

To Shushi's doctrine that *jin* is the *ri* of love, existent before it is felt, the *yo* so soon as it is felt, and the *hodokoshi*, when it is manifested by action, Jinsai objects that it is dividing *jin* into three stages and giving the essential part of it, the real action, only the third place. *Jin* lies in the action itself.

Go-gyō is merely the invention of Tōchūjo and Yōyū, two philosophers of the Kan dynasty.

Man by nature has desire for many things, and while

regulated and moderated there is no evil in it. Good and evil are only relative, and are not of different origin. If it is the case that the good in man comes of *sei*, and the evil of *kishitsu*, what is the *reason* that *kishitsu* is bad? It must be from *ri* (reason) and therefore we are to conclude that *ri* is also evil! That the natural tendency is good is only a general statement of the fact that the great majority of men are good, or possessed of a good disposition.

From the above summary it will be seen how Jinsai attacks Shushi at many points essential in his philosophy. Naturally, there must be agreement between them on some points.

Sorai teaches that man is bound to follow Heavens' way. Every man, however mean, has some function to perform in the world (*ten shoku*) appointed by Heaven, and it is his destiny to fulfil it, but it is not the lot of the multitude to know Heaven's way by themselves. Only a small number of wise men can know that, and then only through the *seijins* or classics. The multitude is simply to follow the *seijins*, teachings. It is not taught or expected that every man should become a *seijin*. Some are only fitted to be common people and do common work as their duty. It will be seen therefore that the teaching of Sorai is more of the nature of a religion than of a philosophy.

With Sorai and his followers the discussion of *sei* is quite a secondary matter, although Sorai holds that man has no more tendency to good or to follow the way than has a piece of wood to make or be made into a box or a house. The joiner or carpenter can use wood for his purpose, because its nature fits it to be made into a box or a house. But it is not the nature of wood to be a box or a house. The leading idea in Sorai's philosophy is that man being a social being, and unable to live isolated, the true way must lie not only in training the individual mind and body in the virtue of *jin*, but must also include the way to promote the welfare and order of the world. Hence his 'way' includes the different

institutions organised by the ancient *seijins*, *Gyō*, *Shun*, *U*, *Tō*, *Bunnō*, *Buwō*, *Shukō*, and *Kōshi*, who were appointed by Heaven, to show the world Heaven's way. These institutions are *rei* (rules of social conduct) and *gaku* (music), and serve to keep people, unconsciously and without suffering, in the right way. Next to *rei* and *gaku* come *kei* (justice and law) and *sei* (government), and by these means people are kept in purity of thought and habit, so that slowly and without being conscious of it they act all according to the 'way', and finally evil thoughts can not affect them. *Jin* is indeed the greatest and most important virtue, but it is only one out of many, and is not the spring of all other virtues as taught in the Teishu school. Nor is it the whole of the way. *Ri* is used only in the ordinary sense of reason. Sorai does not deny that there may be something like *ri*, but if there is, it is altogether arbitrary, and since everybody understands *ri* and 'way' from his own point of view, it can be of no value or significance. He does not believe in *go-gyō* although he believes in *in-yo*. It is vain to try to discipline the mind, he says, by contemplation. To try to discipline the mind by one's own mind is like a mad man trying to cure himself of insanity. Discipline from without is the supreme thing, and evil thoughts when not acted upon do not call for condemnation.

Sorai liked to write in the peculiar antiquated style called *Kobunji*, introduced by Rihanryō or Riurin, a scholar of the Ming dynasty, and to believe that by this means he could understand the true signification of the ancient writings; and believed that then, inspired by Heaven, he could make out the simple and original sense of these writings. His "*Gakusoku*," or rules of teaching in his school, was written in this antiquated style. He considered that China was the only enlightened country and the only one producing *seijins*, his own countrymen he regarded as little better than barbarians.

He thinks that the saying of Mencius that *sei*, man's

fundamental nature, is good, and that of Shishi, Confucius's grandson, that *sei*, man's fundamental nature is to be followed, were written merely to protect Confucianism from the attacks of such contemporary writers as Rōshi (Laotse), who declared that *seijins* are unnatural beings and their 'way' unnatural. These words were written in controversy, and are not to be taken as among the normal expositions of the *seijins*.

He criticises Shushi for making the way nothing but speculative philosophy. He agrees with Jinsai in doing away with the metaphysical entities (*ri*, *sei*, etc.), but considers him wrong in limiting the 'way' to *jin*, *gi*, *rei*, *chi*, and *kō* (filial love), *tei* (brotherly love), and in not going beyond the personal virtues. He attacks Jinsai for having taken Confucius apart from the more ancient *seijins*, and for having made his tenets to be merely the working out of the personal virtues, since, according to his own view, Confucius is the exponent of the way of Sennō (ancient kings, such as Gyō, Shun, etc.) To him, Shōsho or Shokyō (collection of records and teachings of the ancient *seijins*), and Shi or Shikyō (a collection of ancient poems) are of the utmost importance, although he considers Shikyo as only a literary work, while Shushi treats it as an instrument for teaching morality. In Sorai's view, the 'way' of the *seijins* is not itself difficult for ordinary people, but becomes so difficult by the introduction of discussions about *sei*, and the substance and application of *jin*, etc., that all the world gets in despair of doing good at all. He thinks the idea of modifying one's *kishitsu* to be an invention of the Teishu school, and does not believe in *ri* as existing in man's nature.

Jinsai and Sorai are classed together as followers of the ancient learning, and they agree in their opposition to the Teishu school, but it will be seen that they also differ among themselves in minor points.

Briefly told, the position of Japanese philosophy is about this. The Teishu school gained influence from the beginning

of the Tokugawa rule. Iyeyasu and his successors were strong supporters of the Teishu school. But with the rise of the *Kogaku* school, scholars began to doubt the truth of the teachings of Teishu. Although not publicly declared so, in the minds of many, Shushi-ism became a separate doctrine from the tenets of Confucius, and many attempts were made to get at the truth directly from the Classics. If the writings of scholars generally classed among the orthodox school be carefully examined, the number of those who accept Shushi in all things will be found to be much less than appears at first sight. Those who did not accept all the doctrines of Shushi, but freely took from any school, were popularly called the *Sechūgaku* thinkers. As of this school, the names of Nakai Riken and Ōta Kinjō may be mentioned. Some few followed what is called the *Kōshōgaku* (critical learning), but this school was very insignificant, and cannot compare with the critical school of the Chinese scholars under the present Manchurian dynasty. In reality, *Kōshōgaku* is a method rather than a philosophy. The rise of the heterodox school alarmed the Tokugawa Government, to which the Teishu school, as that to which Iyeyasu belonged, stood somewhat in the position of an Established Church. Matsudaira Raku-ō, the Daimyō of Shirakawa, who became First Minister, was strongly inclined to 'orthodoxy,' and he promoted Shiba Ritsuzan, Koga Seiri, and others, to the post of 'Scholar' to the Shōgun, and opened courses of lectures at Seidō in Tōkyō to the public, at the same time prohibiting as heresy all other learning except that of Shushi. This political interference had some effect. Sato Issai, Yoshino Kinryō, Shionoya Tōin, etc., succeeded, and had many followers, but the heterodox school continued also to produce many distinguished men. Scattered over the country, some in the employ of daimyōs, many orthodox and also heterodox scholars drew students from all parts of the land, and were slowly influencing the minds of those of the Chinese school. Among many teachers who lived to the end of the Tokugawa

period, Yasui Sokken is well known. He is one of the followers of the old learning. Yamada Hōkoku, whom I have mentioned as remembered by me as heterodox among many others, leant much to Ōyōmei. He also lived to see the fall of the Tokugawa government. Whatever may have been the influence of Shushi's teachings, it is noteworthy to see that nearly all the followers of the Chinese philosophy now living or recently so, when they have freely spoken out their belief, have proved to belong to the mixed school, somewhat influenced by the writings of the Chinese writers of the Manchurian dynasty. Few only seem still to believe in Shushi's exposition of *sei* and *ri*, at least in their full sense, especially in the doctrines of two classes of *sei*, namely *honnen no sei* and *kishitsu no sei*.

In confirmation of what I have said, I would here refer readers of Japanese to different published lectures at the Shibungakukwai, the earlier parts.

Something similar has happened in China. Since the time of Shushi down to the latter part of the Ming dynasty, practically no deviation from Shushi was made. But from the latter part of the Ming dynasty scholars began to think that the Teishu philosophy is too narrow to hold all the truth. From the beginning of the present Manchurian dynasty many scholars attempted to study the Classics directly from the originals. As the result of this there arose a Kogaku school, something like that of Jinsai and Sorai, but, naturally, different in many points ; and also a Critical school, members of which have shown much skill and ability.

As Shushi has been named a historian by Dr. Knox, it may be of interest to notice the part he played in this line. He did not write history, but took *Tsugan*, a history by Shiba Onkō, and altered it to suit a conventional system, in which what is considered righteous is praised, what is wrong is made to be punished. By changing the text, the usurper is deposed or subordinated, and he who is considered to have been the rightful heir is made to occupy his place, although

as a matter of fact, the greater part of the country shall have been under the rule of this usurper,—and so forth. This was considered to be an imitation of Confucius's Shunjū (a kind of chronicle), the traditional method of interpretation of which was that every word implied punishment of wrong and upholding of right; a theoretical exposition since abandoned by some scholars, including the distinguished Chinese Emperor, Kōkitei or Seiso, the founder of the present Manchurian dynasty, although he was nominally a follower of Shushi. (For the way this emperor makes Shushi's words suit his own views, see the preface by him to *Shunjūdensetsu-isan*, an exposition of *Shunjū* written by many scholars under his direction.)

The traditional exposition of Shunjū so thoroughly filled the minds of scholars that not only Chinese but Japanese history also, especially that written by the Chinese school, came to have for its object not the studying the connections between events so much as the inculcation of morality. Hence those who were considered to be righteous were always made to be so, as far as possible, to show to the world as examples, and all notice of their minor irregularites of conduct was suppressed wherever it could be done. Conversely, those who were considered to be wrong were made out to be always wrong, to serve as a warning to the world, all the good done by them being treated as not sufficient to cover one action unpardonably wrong when judged by a certain standard. Histories thus framed contain usually, at convenient periods, short discussions and judgments (by the author) of the conduct of the persons described in the narrative. This is in imitation of the method of Chinese historians. Histories written during the Tokugawa rule, that is during the ascendancy of the Shushi school, are mostly of this description. Among them *Dainihonshi*, *Nihongwaishi*, etc, may be mentioned as being best known. They were written by scholars of the Chinese school, and in the Chinese language.

Whatever may be the value of histories thus constructed

by scholars of the Chinese school, their political importance at the time was very great. Shushi's modification of *Tsugan*, called *Tsugan Kōmoku*, was looked upon as a continuation of *Shunjū*, and its spirit penetrated deeply into the minds of scholars. The *Dainihonshi* was written by Tokugawa Mitsukuni, the Daimyō of Mito, in a different fashion from that of *Tsugan Kōmoku*, yet in the same spirit, and it thus occupied, to some extent, the place which *Tsugan-Kōmoku* takes in China. This and works like it were very much valued and read, and from principles therein inculcated, scholars gradually began to recognise that the rightful sovereign of the country dwelt in Kyōto. At the same time the Shintō school, represented by Kamo no Mabuchi, Motoori Norinaga, and Hirata Atsutane, brought forward the history of the ancient Imperial rule, and indirectly the rights of the Court at Kyōto. Strong protests were made against calling China, Chū-kwa, the centre of civilisation, and other current notions pronounced absurd, and these found willing hearers among the educated class. In loyality to the rightful sovereign the two rival schools, the Shintō and the Chinese, became completely united. Thus gradually the Chinese philosophy breathed in the spirit of the teachings of Shintō, and became thoroughly national. Loyalty took the place of filial duty in Chinese teaching ; and to serve the cause of the Emperor became the most essential duty for those with cultivated minds. Some became avowed supporters of the Kyōto court, and were known as *Kinnō-ka*.

The followers of Shushi more readily than others adopted the Shintō teaching. Thus Yamazaki Ansai, an earnest disciple of Shushi, believed in Shintō teaching in his later years in spite of the remonstrances of Asami Kaisai and others of his pupils. One of the earnest advocates of the cause of Kyōto, persecuted by the Tokugawa Government, was Takeno-uchi Shikibu, who was a follower of Ansai. Yamagata Daini, and Fujii Umon, who were killed by the Tokugawa authorities, were also much affected by the Chinese

learning. Their successors, Takayama Hikokurō and Gamō Kumpei, also felt strongly the Chinese influence; indeed Gamō wrote books in Chinese. Matsudaira Sadanobu (or Raku-ō), a supporter of the Teishu school, while he prohibited other schools, yet encouraged the Shintō learning and was quite dutiful to Kyōto. In this way the Shintō and Chinese teachings became amalgamated in a common cause. This union of Chinese philosophy with Shintō teaching was still more successfully carried out by the scholars of the Mito clan, as represented by Tokugawa Nariaki (or Rekkō), the Daimyō of Mito and a descendant of Mitsukuni the historian, and by Fujita Tōko, Aizawa Kōzo, and others, *samurai* of the Mito clan. They wrote in Chinese in spite of their being exceedingly national and patriotic, and their philosophy was essentially that of Shushi. These upheld as much as any one the rights of the Imperial court, and encouraged loyalty to it. For some time before the restoration of the Imperial Government these scholars exercised great influence on the minds of the *samurai*, and indirectly did much to bring about the revolution. For many of those who played an important part in it had been, in one way or another, under the influence of their teachings. It will thus be seen that the whole movement of the Kinnō-ka derived much of its impetus from the then accepted exposition of *Shunjū*, and from Shushi's *Tsugan Kōmoku*. It certainly is strange to see the Tokugawa rule much shaken, if not actually overthrown, by that doctrine, which generations of able Shōguns and their ministers had earnestly encouraged and protected. It is perhaps still more remarkable to see the Mito clan, under many able and active chiefs, become the centre of the Kinnō movement, which was to result in the overthrow of the Tokugawa family, of which it was itself a branch.

A COMMENT UPON SHUSHI'S PHILOSOPHY.

By George Wm. Knox, D.D.

[*Read 9th March, 1892.*]

The association of Jinsai and Sorai with the orthodox philosophers in the introduction to my translation of the Shundai-Zatsuwa has called forth Mr. Haga's interesting "Note" giving details of the Kogaku school. Kyusō repeatedly refers to this school but always with sharp criticism and reproof,[1] and the "Note" will enable the reader to test the fairness of his polemic.

As Mr. Haga touches upon some of the fundamental positions of the Tei-Shu philosophy, it has seemed worth while to set forth Shushi's own teaching in a brief resumé. The quotations in this "Comment" are from the forty-ninth section of Shushi's complete works.

Ri is law conceived as an entity. It somewhat resembles the Platonic ideas. By it all things have their ideal nature. It is above all form[2] and of itself is neither motion nor rest.[3] It has motion and rest, for while motion and rest are ki, their law is ri.[4] Essentially ri is benevolence and righteousness and is wholly pure and good.[5]

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[1] Pp. 45–49 above.

[2] 天地之間、有理有氣、理也者、形而上之道也、生物之本也、氣也者、形而下之器也、生物之具也、是以人物之生、必稟此理、然後有性、必稟此氣、然後有形、

[3] 太極理也、動靜氣也、理不可以動靜言、

[4] 理有動靜、故氣有動靜、若理無動靜、則氣何自而有動靜乎、且以目前論之、仁便是動、義便是靜、此又何關於氣乎、

[5] 蓋理則純粹至善、

Ri differs, however, from the Platonic ideas as it is immanent. It is embodied in ki. Abstractly ri precedes ki; but really there is no ri apart from ki, nor any ki apart from ri. Neither is prior for both are eternal.[6] Ri depends on ki and ki depends on ri.[7] Even when thought is pushed to the furthest point, beyond the beginning of any development, both ri and ki exist. This furthest point is named the Great Limit, and to prevent misapprehension is also named "The Limitless and the Great Limit."[8] In it are both ri and ki, though they are distinguishable only after evolution has begun.[9] Shushi says that The Great Limit is only ri,[10] but adds immediately, it is only ki[11] and returns to his formula. Wherever there is ri is also ki.[12] His all pervading dualism is not from an original monism.[13]

Ki is all that ri is not. It is rest and motion.[14] It is always and everywhere of two kinds[15] and the In and the Yō are its all pervading manifestations.[16] In is the west, the earth, the female; it is dark, passive, selfish, avaricious and the way of all evil men belongs to it.[17] Yō, is the east, heaven, the male; it is light, active, pure, unselfish and the way of all superior men belongs to it.[17] There never was

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6 或問理先在光後可言氣先在光後但推上曰去理時與却氣如本

7 問陽氏理無不五行在光後理聚錯氣氣之結時綜中在發後言氣理不發見相似推後亦失條處如何曰如理若陰無所緒便是理若陰附著

8 無極而太極、The Infinite and Absolute—perhaps in modern terms.

9 太極天下物分閑只是兩個陰陽括盡了

10 太極只是一個理字、

11 太極只是一個氣行二者常相依而未

12 嘗相離也理亦行常相

13 To make Ki all and ri merely the abstract law by which it works would come nearer to our idea, but I do not see that Shushi can be so interpreted.

14 動靜氣則是無這一也、

15 地只是兩氣之所消長

16 說陽亦間無氣兩事之者、

17 故君子類得常得限左而個來

其子常得做剛左而個來

說陽亦以說陰明以說陰明生亦以長

地陽亦間得陰陽出

只氣動靜則是無氣兩事氣兩個來之者、所消長陰陽出

說地陽亦間是無這一不也、兩事氣兩個來之者、所消長陰陽出

故君子類陽亦間得無氣常得限左而個來說陰明以說陰明生亦以長陰陽出

其君子類陽亦間得常得限左而個來說陰明以說陰明生亦以長陰陽出

私傷、爲慘、利殺、而爲道、凡事、小人類之道、屬柔、爲暗、爲爽、

私傷、爲慘、利殺、而爲道爲居公、凡事爲剛、其爲陰常爲右爲長、小人類陰明以說陰明生亦以長陰陽出

私傷、爲慘、利殺、而爲道爲居公、凡事爲剛、其爲陰常爲右爲長、小人類陰明以說陰明生亦以長陰陽出

私傷、爲慘、利殺之道、屬柔、爲暗、爲爽、

私傷、爲慘、利殺之道、屬柔、爲暗、爲爽、

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私傷、爲慘、利殺之道、屬柔、爲暗、爲爽、

私傷、爲慘、利殺之道、屬柔、爲暗、爲爽、

私傷、爲慘、利殺之道、屬柔、爲暗、爲爽、

私傷、爲慘、利殺之道、屬柔、爲暗、爲爽、

私傷、爲慘、利殺之道、屬柔、爲暗、爲爽、

a time when these opposites were not.[18] The cosmic processes are condensation and dispersion.[19] Ri forms nothing, ki forms and makes; and wherever ki condenses there is ri in its midst.[20] The kosmos was formed by the action of the In and Yō; the impure sediment settling and forming the Earth, the lighter part forming the Heavens.[21] The opposites grinding together, as the grain is scattered from a mill, so are all things formed; there is both the fine and the coarse, and the former constitutes all that is worthy and noble, the latter all that is evil and ignoble.[22] Earth is thus ki, so are trees, stones and man's body. Heaven is also ki, as are likewise sun, stars, wind, thunder, lightning, man's soul and mind.[23] Ki in fact is everything except the incorporeal and ethical ri. In calling Shushi a dualist, then, it must be remembered that motion and rest, matter and force, matter and mind are still all of one, and this one is ki. His dualism arises from the reification of ri.

The universe is not created, but is an eternal process. The passages in the Classics which seem to ascribe creation and providence to Heaven are explained away. Heaven itself is a part of the unending process that comprehends the all. It is generated like all the rest.[24] Ideally it is

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18 然動靜無端陰陽無始

19 見橫渠言陰陽之聚情之陽必散之一段却

20 便無蓋在計氣其度則中無能造疑作結只造此作氣理凝却聚無處情理意

21 天氣多在在爲中渣運地中央淳磨初央辰央氣裹米間不只氣面磨只動在之去是不外清無磨陰是常者處陽在周便出陽下環爲便急之運天結了氣轉爲成便這地日個一便月地計個

22 生其蓋人四夜物運運而散無萬出無珠粉息便出如擾是天麵者地磨便陽物之相是其氣似游之中運其氣兩有轉四以端

23 人物天地物之人地物之人地物之人

ri, as are all other things by nature. Pyschologically and physically it is ki. When the Classics say that Jōtei does this and that: that Heaven bestows, appoints, protects, generates, etc., Shushi explains, that the meaning is merely that the ri is thus and so.[25] At the same time Heaven is not a dead thing. Shushi is not a materialist in the modern sense. Whatever belongs to man's nature belongs in higher degree to Heaven. When man, e.g., is righteous, Heaven responds. All the universe is to Shushi instinct with life, and he identifies the all with the operations of man's mind rather than with matter. But in fact the distinction of spirit and matter is not his. He moves in a different intellectual sphere. (See "Ki, Ri and Ten" below).

Shushi thought it the distinguishing merit of the preceding philosophers of the Sō (Sung) dynasty that they cleared up the greatest difficulty in the Classics, viz. the ascription of goodness to man's nature notwithstanding his present sinfulness. The Sages left this unexplained but the scholars of the Sō dynasty ascribed the perfect goodness to the ideal ri and the origin of evil to the imperfect receptivity of portions of the ki, and thus presented a theory which so far forth was intelligible and consistent. Its refutation needs more potent arguments than the Kogaku school appear to possess. For Jinsai says: "If it is the case that the good in man comes of sei (ri) and the evil of ki-shitsu, what is the reason that ki-shitsu is bad? It

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[25] 問上帝降衷於民、天將降大任於人、天祐民、作之君、天生物、因其才而篤、作善降百祥、作不善降百殃、天將降非常之禍於此世、必預出非常之人以擬之、凡此等類、是蒼々在上者、眞有主宰如是耶、抑天無心、只是推原其理如此、曰、此是理如此、三段、只一意、這箇也只

must be from ri, and therefore we must conclude that ri is also evil." This conclusion would follow were ri the source of ki, and were ki essentially evil, but neither position is in accordance with Shushi's teaching.

He thus explains the origin of evil:—Ri is the law of all the virtues, the essence of benevolence and righteousness. Wherever ki forms there ri rests in its midst. But ki exists in two forms, as we have seen, and from these all things are developed with the distinction of fine and coarse. Certain portions and forms of ki are perfectly recipient of ri and there is virtue and goodness. Other portions and forms of ki imperfectly receive ri and there is sin and evil.[26] Ri is not evil, for where it is in its perfection is goodness and virtue; its obscuration alone is evil. Nor is ki essentially evil, though it many obscure the ri as the morning mist obscures the sun. Ri is changeless and it is of ri that the superior man writes when he calls man's nature "good." Ki is changeful and it is not fitting that he should write of it.[27] As ki ever changes ri cannot be always evenly received. Evil is thus of necessity, as always in pantheistic systems.[28] Ki exists everywhere and always in its two-fold form, so that In and Yō, motion and rest, the fine and the coarse, being associated together, there is only a question of preponderance.[29] In the meanest man good is not wholly absent, and in the best man an element of evil

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26 相偏氣通成不同則而論
隔氣之塞異齊也氣氣萬
之偏言理理氣猶異物
塞者然固之之相觀之
者便氣不異異近萬一
便只稟可者者而物原
自得既以偏純理之則
與理殊偏全駁絕異理
理之則正之之不體同

27 其故
非君
常子
道
其
常
而
不
道

28 氣可鴟矣之等不及看
所道集更理語可惡道
生不蝮以一及以亦書
否是蝎事節易濁不中
天惡實即傳者可善
地草攷此陽不不惡
陰毒之義無謂謂皆
陽藥只可可之之天
之還如推盡水性理

29 欲求迭正
一綱至紫
之經聚云
不相散陰
能揉相陽
蓋相盪之
謂兼升氣
是相降循
也制相環

remains. Only the ideal ri is perfectly good.[30] And as condensation continues the "Way" (ri) disappears from among men; the world returns to chaos, and the process begins again.[31]

Jinsai and Sorai charge the Tei-shu school with making the "Way" nothing but speculative philosophy, and the contemplation of ri. This is so far true that philosophical knowledge is represented as essential to virtue, in agreement with Plato. But it is not taught that knowledge terminates in itself. It leads to action and its end is a virtuous life.[32]

As natura naturans and natura naturata are both ki; as ki is both matter and force, both soul and body; as by its varying degrees of condensation there may be ki within ki and ki visible and invisible, Shushi's own language is not always clear and there is room for differing interpretations. However, the theory is fairly consistent, though, as in all the philosophy of the Far East, clear definition is wanting. It may be questioned whether Shushi was always clear as to his own meaning. Ri is more difficult of explanation than ki, for it never condenses nor changes. It is forever one and yet each particular thing has its own. When the difficulty is forced upon him Shushi takes refuge in illustration and says:—As the moon is one and yet is seen in every stream, so is the ri; an illustration which shows how far he was from solving his problem.

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30 陰陽之氣相勝而不能相無其爲善惡之象則異乎此蓋以氣言則動靜無端陰陽無始其本固並立而無先後之序善惡之分也若以善惡之象而言則人之性本獨有善而無惡其爲學亦欲去惡而全善不復得以不能相無者而爲言矣

31 又問天地會壞否曰不會壞只是相將人無道極了便一齊打合混沌一番人物都盡又重新起

The Kogaku school is right in its criticism of the quotation of the Classics in support of the Tei-Shu ontology. Kyusō praises the philosophers of the Sō dynasty for discovering that which was not taught by the Sages, but still cannot resist the temptation to quote Classical authority for the discomfiture of his opponents. His success is perhaps equal to that of most men who quote ancient proof texts in support of modern theory.[33]

The polemic of the Kogaku school in general furnishes another illustration of the ordinary method of philosophical controversy in the past in the Far East. The *Okina Mondō*, the *Heki-ja-sho-gen* and Kyusō's writings, offer further illustrations. On the whole they justify Faber's severe comment on Shushi's own criticism of Buddhism and Taoism:—"But the polemics seldom or never enter thoroughly into the doctrines which are really brought forward by their opponents, but instead, they caricature them so that their monstrosity is easily proved. In this way Mencius treated Meti, and it seems as if this method is especially adapted to the Chinese mind."[34]

The Kogaku school succeeded in shaking the faith of many in the Tei-Shu doctrine, but did not substitute any clear and defined system in its place. As constructive philosophers they do not appear worthy of a place with Shushi and Ōyōmei. The judgment of the orthodox scholars upon their teaching was perhaps not wholly undeserved.

In conclusion it may be noted that the Tei-Shu philosophy still retains sufficient vitality in Japan to lead Dr. Inoue Tetsujiro, Professor of Philosophy in the Imperial University, in the current number of the Transactions of the Philosophical Society, to devote an article to the exposure of the absurdities of its teaching as to Natural Philosophy.

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[33] Pp. 47–49 above.

[34] The Doctrines of Confucius, p. 33.

REMARK BY PROFESSOR INOUE.

Dr. Inoue, Professor of Philosophy in the Imperial University, expressed himself as much gratified with the exposition of Japanese philosophy given by Mr. Haga and offered the following criticisms. Mr. Haga had mentioned the names of most of the Japanese philosophers who dissented from the Tei-Shu school, but he had forgotten to add a very famous writer, Kaibara Yekken (貝原益軒) who was the contemporary of Jinsai and Sorai. Among the numerous books written by Yekken, there is only one which claims especial attention from a philosophical point of view: his *Taigiroku* (大疑錄), which means "Great Doubt," so called because he explains in the book why he doubts the philosophical doctrine of Tei-Shu. In one place Yekken says: "*Ri* and *ki* are surely one thing, but Shushi takes them for two different things. I am therefore embarrassed, and I cannot follow him." Yekken was without doubt a monist, because he thought that ki alone is the fundamental principle of the world. But he had adopted his main idea from a celebrated Chinese writer, Rasei-an (羅整庵), in the Ming dynasty.

On the other hand Mr. Haga, he thought, might well omit some writers, for example Shiwonoya and Yasui, who had done nothing in the sphere of philosophy.

Moreover it would have been advisable to trace the connexion between the Japanese philosophers, whom he mentioned, and the Chinese philosophers from whom they borrowed their fundamental ideas. Most of the Japanese

philosophers had adopted the views of some Chinese philosopher or other. Jinsai, for example, got some of his philosophical principles from Goteikan (吳廷翰) in the Ming dynasty, who wrote a book entitled *Kissai-manroku* (吉齋漫錄). Sorai got his principal idea from Junshi. Junshi considers human nature as originally bad, and Sorai adopts this view implicitly, although he does not express it openly. Junshi considers rei (ceremony) as highly important, and rei has almost the same position as moral order in his philosophy. The views of Sorai approach very near to this, because he thinks that rei (ceremony) and gaku (music) are the moral principles of the sages. Sorai has also adopted some views of the savant Yōshōan (揚升庵). In the case of Ōshio it would also be better to show in what points he is indebted to the philosophy of Ōyōmei, *and whether or not any of his views at all were his own.**

Dr. Inoue thought that Dr. Knox had shown a surprising acquaintance with Chinese and Japanese philosophy. He agreed with Dr. Knox that Shushi had never believed in anything like a Creator in the same sense as Europeans generally understand the term. The philosophy of Shushi was on the whole materialistic. The ri of Shushi just referred to could be held, he thought, as the reality in opposition to ki, just as the "thing-in-itself" of Kant, although ki is not the manifestation of the ri.

As regards the periodical change of the world, Shōkō-setsu (邵康節) in the Sung dynasty had maintained that the world must undergo a radical change in every 129,600 years and become chaos once more, but after the same length of time it would be set in order again, so that the world would change in an eternal round like day and night.

The *Mukyoku* mentioned by Dr. Knox comes first in the *Tao-te-king* of Laotz. In the well known letter of Rikushō-zan to Shushi we find that this point is well noticed.

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* Ōshio Introduction, note 35, above.

KI, RI AND TEN.

By George Wm. Knox, D.D.

[*Read 9th March, 1892.*]

The Japanese view of the Chinese philosophy is well represented by Ōhashi Junzō and Kaibara Yekken. The first is a fervid upholder of the Tei-Shu orthodoxy, and the second a modest and moderate critic of that system. In the following extracts from their writings passages have been combined and condensed that the essential points may be presented compactly.

Ōhashi Junzō was born near Utsunomiya, of a family which had lost its position and property. His fondness for books attracted the attention of a merchant of Utsunomiya, Kikuchi of the Sanoya, who adopted him, educated him and gave him his daughter in marriage. Junzō studied at the Confucian college, the Seido, in Edo, and after completing his studies opened a school in the suburb called Kō-m'me mura, beyond Mukojima.

He lived in the times when the old was giving place to the new, and strenuously opposed the opening of Japan to foreign ideas and civilisation. To his earnest conservatism the foundations of good government, of morals and of society seemed to be threatened; and yet the scholars who had been his teachers were among the advocates of the new policy.

The *Heki-ja-sho-gen* was published Jan. 26th, 1857. It is an impassioned attack upon the sympathizers with the West from the position of implicit faith in the Tei-Shu philosophy.

Junzō, at one time, had been a follower of Ōyōmei but finally rejected that system. The Tei-Shu ontology expressed the absolute truth to his mind, and though all others should forbear he was moved to speak his message. He felt himself to be a witness for truth and righteousness, and, wholly in the spirit of the doctrine he professed, sealed his faith with a martyr's suffering and death.

Junzō was imprisoned in February, 1862, because of his opposition to the marriage of the younger sister of the Emperor to the Shōgun (December, 1861). The attack on Ando Tsushima no Kami was in February, 1862, and Junzō's students were implicated. Junzō himself was charged with instigating it and was repeatedly examined by torture. He maintained his innocence, however, and was released from prison, August 2, 1862. Exhausted by his sufferings he died five days after his release.

His prophecies have been in part fulfilled, even in his own family. His two grand-daughters, by adoption, are students in a prominent school in Tōkyō, and with the physics and astronomy of the West have accepted its religion.

The following description of Ki, Ri and Ten is taken from the second velume of the *Heki-ja-sho-gen.*

THE WEST KNOWS NOT NATURAL PHILOSOPHY.

In the thought of the Sages nothing is before Natural Philosophy or more important. The term occurs first in the Book of Changes, and the subject is treated in all the Classics under various names. He who would know the truth of Heaven and man without its aid, is like a boat without a rudder: his labour is all in vain. After Mencius, however, scholars knew the mere words and outer form of the doctrine, and failed to grasp the underlying truth until the philosophers of the Sō dynasty, who first comprehended the Sages and

showed that knowledge has its root in natural philosophy, and action its root in reverence. Should Sages again appear they would not oppose this exposition.

Ri is in the spirit and form but is not ruled by them; on the contrary they are ruled by ri. This teaching is so difficult that some great men like Rikusōsan and Ōyōmei have failed to understand it and have fallen into heresy. How impossible is it then that ignorant and purposeless men should comprehend?

Followers of the western learning steal this illustrious name and call themselves natural philosophers, shamelessly saying that the West knows the law of the universe. They are rebels who exhibit a forged seal of state and gather a vile rabble. True disciples of Confucius and Mencius should raise their banner, expose the counterfeit, and destroy these false scholars, that they may get their just reward from the spirits of the former Sages dwelling in Heaven. But scholars do this not. They join the rabble, praise the Western learning and pierce the Sages as with a sword. My powers are all too small, but putting modesty aside I shall explain the learning of the Sages, the false luxuriance of the Western science and the meaning of natural philosophy.

All know that the teaching of the Sages is of the "Way" and not of wonders, so if we know not the "Way," let our hearts be never so honest, we shall be like an archer without a mark, like a traveller who knows not the road, but depends upon his fancies and wanders guideless and chartless into byways. Therefore said the scholars of the Sō dynasty, "First know, then act." But modern scholars are not intent on this and have no true knowledge. They glibly say: "The Way is benevolence and righteousness, obedience and loyalty," while knowing nothing of the reality, the source and body of the virtues. If we ask: Since the Way is one, what distinguishes the virtues? How were Heaven and Earth formed? By what do all things exist? If man's nature is good whence comes evil? By whose rule are all

men formed alike? Why is there communion with our dead ancestors when we worship them? Why is all the universe well ordered when my one heart is at peace? If we ask any fundamental question the perspiration starts at once and they cannot reply at all. Or if they speak it is only from the fancy of the moment, and within they are like a boat driven by the wind or a horse with a broken halter. Though they read a thousand books and their eloquence flow like a river, they are as drunken men. First of all then, we must know the "Way," and the first step is natural philosophy. This is the method of the holy learning.

"Way" and "ri" differ in form as narrow and broad, but the reality is one. If it is not studied we learn only appearances and forms, but as ri is formless, voiceless, odorless, it can be studied only as ki is earnestly investigated. The Universe is one ki. Divided it is the In and Yō, Heaven, Earth, the Five Elements, and all things, sun, moon, hills, streams, seas, men, birds, brutes, grasses, trees, insects, fishes. Though these all differ yet are they from the one ki. Its ethereal pure part revolving above is called Heaven, its heavy, impure part, stationary below, is called the Earth. Of the Yō and lighting the day, it is called the sun, and of the In and lighting the night, it is called the moon. Endowed with the five elements and resembling Heaven and Earth it is called man. Flying through the air it is called birds, creeping upon four feet it is called beasts; and in each of these various kinds are divisions innumerable. But all are various appearances of the one ki. Condensed it forms all objects of shape and dissolved it is like the air, and there is no space without it anywhere. As it condenses, that which yesterday was not has form, and when it dissolves that which was until now perishes, condensation and dissolution being alike constant and incomprehensible. In all the universe rain and sunshine, bloom and decay, man's birth and death, the past and present of Heaven and Earth, the changes of sea and land are solely because of the ceaseless

changes of the ki alone. The ki is fine and coarse in kind, and though all know the coarse, the fine is not so readily perceived. The gods, the soul, the mind, knowledge, all are wonderful, undefinable and of the one ki. They are of its finer part and subject to change, birth and dissolution. They are not changeless like the ri; but careless scholars identify them with it and think the coarser part only is ki.

Ri is not separate from ki, for then were it an empty abstract thing. It is joined to ki and may be called, by nature, one decreed, changeless norm. It is the ruler of ki, the very centre, the reason why ki is ki. So the ancients roughly called it the origin of things and things they called its body, as if ri were like man's heart and ki his body. But remember that is an illustration only, for man's heart is not ri but ki.

Fire and water are ki; and their burning and flowing too are ki. But that water being water flows and does not burn, and that fire being fire burns and does not flow, that such is the decreed nature of the two, this is of their ri. Burning and flowing do not constitute the reality of the ri but it is their necessity, their unchangeableness. Flower and leaf, unfolding and bloom, all are ki. So too is sweetness and bitterness. But that bitter shall be bitter and sweet shall be sweet is decided unchangeably before birth by the ri, and hence there is no confusion, and bitter is never sweet nor sweet bitter. So with all the unchanging unity in variety of nature, its reason is ri. So with man: eye, ear, hand, foot are ki; sight, hearing, walking, talking, all are ki, and because of ri their order is undeviating and their functions unconfused. The heart and its knowing, its feeling, its passions, all are ki; but that joy goes with good and grief with ill, that tears fall with sorrow and laughter comes with happiness, that all this is determined before birth for wise man and for fool, is ri. With differing things ri has differing names yet is it ever one, decreed, unchanging and the same.

As we said before that in the universe there is no space without ki, so now we say of ri, for wherever there is ki there too is ri. Ki is ever flowing, ever changing; that ever flowing, ever changing it is not confused, this is ri. Were ki without ri, only confusion could result. But the vulgar scholars who know only ki think it is first, and that ri comes from it, as if boat or cart were made without a thought of their future use! Not so! The thought of the use precedes, and the ri remains even after boat and cart are gone. But were ri without ki it would be pure nothing, like the Buddhist "knowledge."

Should we think the "Way" to be of ki then with the changing ki, with its newness and its age, the Way too will change and neither the Way of the ancients nor their virtues will be ours. In the end we shall be like the brutes. Fearing this the Sages set forth the "Way" on high with the ri first and thus unchangeable amidst all the permutations of the ki. If we know not ri study is all in vain and leads to heresy, to the worship of the Buddhas and to prayers to the gods.

This is the method of our study:—First with firm resolve we determine the great questions; whether Heaven and I are one? May all men become sages? Is truth one from the beginning? Why have I become a man? Beyond doubt that having the excellence of the five elements I am one with Heaven and Earth, and we will swear to study until death that we may know. Then, that the mind may be clear, passions must be subdued and evil thoughts put away. This is the foundation for the study of natural philosophy. Then may we study other things and acts;—why the ri are not interchanged; why the eye hears not and the ear sees not, and the like. In things, in books, in acts, in our own feelings, from our friends, ever without idleness, must we study and at last we shall comprehend. Though in the multitude of things we can never study all, still shall we know beyond all doubt that amid all changes, in all

beings great and small, in everything is ri. He who studies without knowing it is lost in a city without a map, is like a multitude of workmen who follow neither plan nor leader. All this I know by my experience, but it rests not on my evidence for it has the full support of Shushi's testimony.

To seek ri by the analysis of things is to seek the wind by the analysis of a fan or ideographs by the analysis of a pen. And such is the learning of the West. It knows only ki and deals with the seen. Analysis and the microscope increase its minuteness but show it no ri. It can analyse an egg but does not know why an egg of a barnyard fowl when hatched by a pigeon brings forth a barnyard fowl. It never can learn that the egg enfolds an unchanging ri, be its microscope never so powerful.

So is it with the "Way." The West knows not the ri of the virtues of the heart which are in all men unchangeably the same. Nor does it know that the body is the organ of the virtues however careful its analysis of the body may be. To suppose that the various duties which arise from our natural relationships can thus be discovered is laughable.

The adherents of the Western philosophy, indeed, study carefully the outward appearances, but thus have no right to steal the honoured name of natural philosophy. As when ki is destroyed ri too disappears so with their analysis of ki they destroy ri and thus this learning brings benevolence, righteousness, truth and loyalty to naught. Among the Westerns who from of old have studied details minutely I have not heard of one who was zealous for the Great Way, for benevolence, righteousness, loyalty and truth, and who opposed the absurdities of the Lord of Heaven (God). Their learning of an hundred things stops with an hundred things, and their learning of a thousand things stops with the thousandth. They are like students who learn industriously the forms of ideographs, and not the meaning. However many they may learn, not one book can they understand.

THE WEST KNOWS NOT HEAVEN.*

The doctrine of the Sages knows and worships Heaven, and without faith in it there is no truth. For men and things, the universe, are born and nourished by Heaven and the "Way," the "ri" that is in all, is the "Way," the "ri," of Heaven. Distinguishing root and branch, the heart is the root of Heaven and the appearance, the revolution of sun and moon, the order of the stars, is the branch. The books of the Sages teach us to conform to the heart of Heaven and deal not with its appearances. The son is not filial if he know not his parent's heart, be he never so well acquainted with the shape of his father's face, with eyes and hair and the body in all its details. Such is the Western learning of our times. It studies only appearances and takes Heaven for a dead unmoving thing. It falls into scorn and lust. But it is drawn out long like a thread, and men who know not Heaven's heart are deceived and think, —The West knows Heaven. How great their error!

The books of the Sages say much of Heaven because Heaven and man are of the same ri. The ignorant think that Heaven is Heaven and that man is man, that man and Heaven are distinct. Such men believe neither reason nor the "Way" and with their selfish false wisdom become like brutes. In pity the Sages earnestly set forth the truth.

To know Heaven we must know man's body. It comes from our parents and is nourished by them as all know. How is it that from the beginning of our existence eyes, nose, face, front, back, hands, feet and all the members of all men, past and present, east and west, are in the same order? It is because there is one ri in all the universe, one lord and ruler, the great parents of us all, called Heaven. Its body we know as we study man. Our bodily members

* Consistency requires that the word ten be retained in the translation with ki and ri, but as its translation is not open to question the English word has been used.

perform their duties unremittingly, tears ever fall with grief and laughter comes with joy, because there is a heart within which is the indwelling Heaven. Man makes it not, but voiceless and shapeless it causes this wonderful activity. So the ancients called the heart "the lord of Heaven" and its virtue, "Heaven's clear command"; but with the body removed we call it Heaven at once without other name. To show this oneness Mencius said, "Knowing nature we know Heaven." Would we know Heaven then we must know the condition of our heart's nature. As our conduct conforms to ri, as in moderation we act, as our hearts rejoice when we are righteous and are ashamed at sins, as we know the least right or wrong within, Sage and dunce, emperor and peasant, differ not at all. This is man's nature and this is Heaven. What man's nature hates Heaven hates; and what man's nature loves, Heaven loves. What is loved brings blessing and what is hated brings grief. So have all the philosophers taught. Heaven seems far away and strange, yet in truth it is the living ri that errs not nor ever is deceived. It can be worshipped only by benevolence, by perfecting our hearts in obedience, loyalty and truth, and by the faithful government of province and empire. Cast away evil, cherish the good, turn from the foolish, use the wise; thus only can Heaven be served.

Astronomy observes the movements of the heavenly bodies and makes calendars. It has its uses, but is only of the appearances. As we know its use, as it too comes from the heart which reverences Heaven, it should not be pursued carelessly. The Sages made calendars to strengthen the state, for the farmer works according to the times of Heaven and if he miss the seasons his labour is in vain. Beyond this need the Sages felt no interest in the mere movements of the heavenly bodies. The later Chinese astronomers became famous and went into the details seemingly beyond the Sages. But the true purpose was forgotten, and the labour was all for fame and accompanied with contentious rivalry.

It helped the farmers not at all. Long ago the Chinese scholars pointed this out. All that the astronomers taught the Sages knew but spoke in brief outline, for they dwelt only on that which is of benefit.

The foreigners are worse, and like the brutes. Not reverent of Heaven, and ignorant of the purpose of the Sages, they follow the custom of their land and study all the details, measure distances, observe the stars and make astronomy a toy. Not knowing the parent's heart they handle and criticise his body. It is valueless, and in the end they scorn Heaven and their sin must be severely reproved. Unaided by man, Heaven, voiceless and shapeless, violates no law, and causes sun and moon to revolve, wind to blow and rain to fall a thousand, ten thousand years unchanged. But the barbarians with their little knowledge know this not and think Heaven, Earth, man, things, sun and moon, all separate and distinct. They would study all by the shape, and know not the wonder of the overshadowing Heaven. Be it never so minute such astronomy knows Heaven not at all.

Northern lights, comets and shooting stars, are ordinary things, and not the reproofs of Heaven to the Westerns, who will not stand in awe of them. They think Heaven a dead thing not connected with these portents, and thus the Way of the Sages and man's obedient heart are both destroyed. And some of our scholars are deceived, admitting errors and parables in the sacred books; are filled with doubts and accept the new learning. Most pitiful! Most detestable!

Not without reason surely did the Classics bid us fear the signs of Heaven. When sons are wicked, disobedient, dissolute, drunken, idle, gamblers, sorrow fills the parent's heart and his body suffers too. He thinks of suicide; the sorrow grows; and as his ki hardens the head aches, hands and legs tremble, boils, carbuncles and the like appear. This is the cause though men know it not, for as a stretched rope feels a pull through all its length so are parents and

children one, affected alike and with the same feelings. With the distinction of great and small so is it with Heaven and man: body and ki are one. When rulers are virtueless and the ruled lawless, when scholars are wicked and ignorant men recklessly rise in mobs; then Heaven and Earth feel the wickedness of their many sons and their ki hardens. Then come Northern lights, comets, thunder in winter, snow in summer, earthquakes and famines. He who cares not for the suffering of his parent is not a man; and what punishment is too severe if he remain at peace while they for his sake are diseased? Thus do the Sages teach us to reverence our great parents Heaven and Earth as we gaze on them. When signs appear let us examine with all care;—Is this disease because of evil in my heart; or injustice in my government; or hatred among the people; or unjust laws? Even if we find no wrong, yet has the portent come because we are unfilial to Heaven, and we must examine and reprove self with carefulness. The brutes from the West know this not and them I reprove not. But our scholars! Not to know this! For them to turn the teaching of the Sages into parables! With the hearts of fools they imitate the hearts of philosophers, and their folly exceeds that of the foreigners themselves.

Such separation of Heaven and man, of our conduct and its signs is wholly opposed to the Sacred Books. Heaven rejoices when man is virtuous and bestows wind, rain, and harvest in their season so that the empire is at peace and men live out their appointed days; thus are Heaven and man one in joy and in prosperity. Nor let us fail to know that calamities and portents are for our sins and crimes. To separate man and Heaven, to cease to fear its signs and to fail to know our mutual communion, what folly is this! what blindness!

One relationship have we all to Heaven, ruler and ruled alike. Yet has the ruler's sin more open and terrible effect. In the family oldest and youngest are alike loved, yet the sin

of the heir is most grievous since his fall bears down the others too, and so in the state the ruler's sin is most grievous though the sin of the common man is neither overlooked nor unpunished. When many of the common people sin the whole body is threatened and the greater punishments appear. Not rulers only but all affect Heaven and it depends upon all. The teaching of the Sages is for high and low alike.

Astronomy cares for the movements of Heaven, not for its heart. The benefits of its study are few and the injury is great. When in China astronomy flourished most, the morals of the people were most decayed. Only the branches and not the root of Heaven were known and when thus men are ignorant of Heaven's heart evil is within.

Consider eclipses, for example. They follow law, and may be calculated so that men come to fear them not. Not so the Sages, who reverenced Heaven. The sun is the essence of the great Yō and ever gives light. Whether it lose its light according to law or unexpectedly is it less a change in Heaven ? Surely the filial son does not talk and laugh when his parent is ill, merely because the illness is periodical ! So when an eclipse occurs he who reverences Heaven beats a drum, makes his offering, fasts, stops all music as did the Sages in ancient days. But nowadays all say that eclipses are ordinary things and not to be feared ; and by and by folks will cease to examine self when there is unseasonable thunder, great winds, floods, drought and pestilence. The Sages's teaching that we should examine self is thought folly and Heaven too is scorned. Truly it is cause for the deepest grief. The evil comes from measuring Heaven and knowing not its heart.

Western learning knows not Heaven but only its appearances ; it ever discusses new views. As it extends Heaven will be thought a dead thing and will be sinned against and scorned. The great " Way " of the Sages will come to an end. As the adherents of the Western learn-

ing noisily teach and make books they will at last go to the very end and be zealous for the Mansions of Heaven.[1] Should not this be feared?

All that is admirable in the Western learning was already in the ancient books. Without imitating the West we can study these, compare and master them, and on this foundation make true progress. It is not the part of scholars to leave the root and be zealous for the branches. If zealous for the branches we have no cause for pride toward the West, nor any cause for shame if we equal not its learning. We must separate things weighty and light, nor mingle them in choice. But alas! Many are they who know not the great root and are overwhelmed at the minuteness of the learning of the West.

The teaching of the Sages is the original truth and given to men it forms both their nature and their relationships. With it complete naught else is needed for the perfect following of the "Way." Let then the child make its parent Heaven, the retainer his lord, the wife her husband, and let each give up life for righteousness. Thus will each serve Heaven. But if we exalt Heaven above parent or lord we shall come to think we can serve it though they be disobeyed and like wolf or tiger shall rejoice to kill them. To such fearful end does the Western learning lead.

Heaven is high, exalted far above our little efforts to extol or belittle it, beyond our praise or blame. Would we benefit it we cannot; would we kill it, it is beyond our reach. Only as its Way is fellowed and its laws observed can it be served. Let each one die for duty; there is naught else that we can do.

THE TAI-GI-ROKU.—BY KAIBARA YEKKEN.

Kaibara Yekken was a follower of the Tei-Shu school but in old age came to doubt its teachings. He wrote the

[1] The Christian Heaven.

Tai-gi-roku but did not print it or show it to many students. After his death it was found and edited by Ono Michiakira and printed in the year 1766. The editor prefaces the book with an essay by Daizai Shundai. To Daizai's thorough-going dissent Kaibara's "Great Doubt" was little better than faith. Daizai writes:—

"Kaibara only doubted, he did not reject, and remained within the Tei-Shu household. He too exalted Mencius and so was not a true follower of Confucius. Shishi[1] already departed from the teaching of the Sage and Mencius differed from him still more. But Mencius was so engrossed in teaching the (debased) men of his own time that he did not notice his own divergence from Confucius. Nor did the philosophers of the Sō dynasty notice it, but put his writings by the side of the Analects. Mencius said, 'the nature is good' for his didactic purpose, but the philosophers of the Sō dynasty thought that the phrase could be explained only by distinguishing the ki shitsu no sei and the honnen no sei.[2] Confucius did not use the terms heart, nature, ri, ki. They were introduced by Shishi, fostered by Mencius and brought to full luxuriance by the philosophers of the Sō dynasty, being made in all essential points identical with Buddhism and Taoism. Kaibara indeed doubted Tei-Shu but he did not doubt Mencius, and so failed to understand his own doubt.

"Buddhism and Taoism are opposed; their seeming agreement is only in unessential points. The Tei-Shu doctrine is eight or nine tenths Buddhism and one or two tenths Taoism. Kaibara supposed that he was opposing the remnants of these doctrines which remained in Shushi's works. But he was far from thorough or he would have rejected Shushi altogether.

"The words of Confucius are the only standard of doctrine. Even Shishi and Mencius are to be rejected; and

[1] The Grandson of Confucius.

[2] Pp.

still more other teachers; and still more these philosophers of a later age. But only they who study Confucius independently are prepared to reject them.

"Shushi's followers place him above Confucius and read no other books. How then can they doubt? I too early read Shushi, but doubts arose which the Book of Changes and the Book of Rites confirmed. I cast Shushi aside and then, first, Confucius shone forth like the sun when clouds are dispersed. In other things I cannot equal Kaibara, but in my rejection of these philosophers I am his superior."

THE GREAT DOUBT.

Confucius was the first to set forth the "Way" with clearness. After him Mencius spread abroad the best of Confucius' teaching, but later on truth almost disappeared; only a thread remained until the Sō dynasty, when many philosophers appeared. The brothers Tei were chief of them all, and since their time Shushi has been supreme. His writings are the most instructive of all the books since Confucius and Mencius; it is indeed a blessing to have lived after him that one may study his works. Tei and Shu were the teachers and the models of philosophers. They must be honoured and their teaching believed. Yet Shushi was not a Sage nor can his teaching be put upon a level with the words of the Sage. The Tei-Shu doctrine does not agree in every point with Confucius and Mencius. So scholars must examine the Tei-Shu teaching with impartiality and thoroughness, accepting the true and rejecting the false. The philosophers were not Sages, and only the teaching of the Sages is infallible. Shushi himself thus writes:—'With great doubt comes great progress; with little doubt is little progress; without doubt is no progress.' But doubt may be either true or false; true doubt considers profoundly and rejects only when forced so to do; false doubt is merely destructive, it is not to be taken as true.

The philosophers of the Sō dynasty teach that :—the limitless is the source of the great limit; non-being is the source of being; ki and ri are two and distinct; In and Yō are not the "Way" but are in the category of form; the nature of Heaven and Earth must be distinguished from the 'ki-shitsu'; sei (nature) and ri are one and is born not and dies not; but all of these doctrines are from Buddhism and Taoism and are opposed to the teaching of our Sages. Then further, the Tei-Shu school teaches that the heart is to be purified by quietness, isolation, contemplation, oneness with the ri of Heaven: a method they have taken from the mysticism of the Zen sect and that is not in accordance with philosophy. And once more, 'That the clear empty divinity (rei) is the reality of the heart, and that Heaven's ri is unopposed, empty, broad,' is also from Buddhism and Taoism. They based their teaching on the Classics and yet included that which the Classics taught not and so we must accept and reject with discrimination. They severely criticized Buddhism and Taoism, and how it came about that they yet accepted these in part I do not understand. I can only doubt.

The six Classics are the words of the Sages, the truth of the ages, to be believed and never doubted. Among them all the Book of Changes is preëminent, the profound source of the Classics. If we believe it not what shall we believe? It teaches as follows :—

'In and Yō are the Way, the rest and motion of the one ki. Rest is In, motion is Yō; the endless revolution is thus named.' Thus the Sages put one character (ki) above the In and Yō, with profound meaning. Their teaching was sufficient, the eternal truth, the foundation of right and one character (ri) was not omitted by them. Why has it been added then? The "Way" is the movement of the In and the Yō upon right lines (jō-ri), without confusion. Ri is the ri of the ki, they are not to be separated and made two. There is neither "before" nor

"after,' neither separation nor meeting, for ki and ri are just one thing. I cannot follow Shushi as he divides them.

The Book of Changes says again :—'In and Yō are the Way;' but Shushi teaches that while the body is born and dies the nature (sei, i.e. ri) is born not and dies not. And Ritaikei in complete agreement says :—'In ki is birth and death, in ri is neither birth nor death.' But I cannot understand this position and thus suggest my dissent while awaiting fuller instruction. As ki collects, man's body is born; as ki disperses, he dies. Nature is the Ten-ri received at birth and ri is the ri of the ki. These are not two. If the body dies the ri is destroyed. Ki is the source of the body and ri is the ri of the ki, so when born the ri comes to exist and when the body dies there is no more its ri remaining. Coolness and heat are the nature of water and fire: when the water disappears and the fire ceases neither coolness nor heat remains, the nature too is destroyed.

To put ri for sei is not good exegesis of the Classics. They teach that the decree of Heaven, what man receives from Heaven, is nature (sei). In sei is the distinction of the ordinary and the extraordinary; the ordinary is the good and the extraordinary the evil. But the latter are few and do not contradict the teaching that the 'nature is good.' All men like that which is sweet and dislike that which is bitter, yet with one in ten thousand the reverse is true. The exception does not destroy the rule. That we receive from Heaven is the ki-shitsu. The nature of water is to flow and to moisten, and its true nature is pure; but its nature and its purity are not two, they are one. The ki-shitsu no sei and the Ten-chi no sei are not to be separated by analysis. The latter is received by the former, and the former by the latter. If there is no ki-shitsu no sei there can be no Tenchi no sei, and thus the two are one and must not be set forth as two. Confucius and Mencius said nothing of two sei (natures) and so are readily understood. Sei at its origin is ever one; but in

its divisions and branches it is all things. At its source it is perfectly pure; but as things are formed, as the ki is received spontaneously, there is the difference of pure and impure, thick and thin, and as thus received and become man it is his one, decreed nature. Thus the source of Sage and of fool is spontaneously different.

The opponents of the Tei-Shu school since the Ming dynasty have been filled with pride and ambition, desirous of distinction and reputation. They do not know their own true value, as they revile Shushi as if he were their inferior or a heretic and not a true follower of the Sages. It is not true criticism when we are without sympathy, but merely find fault and revile, picking out every flaw as if that were being frank, and rudely magnifying trifles into errors. Even if right such reproof angers him who is reproved, and gains no hearing. That is not the true "Way" of reproof. Such has been the criticism of Shushi by later scholars. His teaching was based on the Classics and not far astray. As he was not the equal of the Sages so are his critics inferior to him. They do not really understand him. On the other hand most scholars have accepted Shushi, but too blindly, as if he were wholly at one with the Sages. Thus the right has been somewhat injured, and again Shushi has been somewhat misunderstood.

The Way of the Sages is readily understood, and easily followed and obeyed. Hence it is throughly obeyed, and brings forth great virtues, and there are many who follow it. So Mencius compared it to the great highway and said:—It is not difficult to understand it and I grieve that men go not therein. But the later scholars introduced their discussions making it difficult, too high, too distant, hard to be understood and obeyed. In this they differed from the original teaching of Confucius and Mencius.

With the Sages filial obedience, reverence, loyalty and truth were the foundation, and learning was secondary. Their easy method was like the highway, even the fool

might readily know and follow it. Thus is there progress and a gradual advance toward perfection. But the philosophers of the Sō dynasty with their "limitless and great limit" put progress in knowledge as the first thing: and made the purification of the heart through contemplation the foundation of right conduct; and set forth fine, complicated, literary discussions as the foundation of learning. This is what I mean by "too high and too distant and too difficult." This is to put that which is useless and difficult before the virtues. It is too profound, too minute in its analysis, and in the end misses the plain and chief meaning. In this philosophy differs from the Way of the Sages.

Shushi was fond of Buddhist phrases, and never wholly emancipated himself from the influence of the Zen doctrine, which he studied thoroughly in his youth. He was also fond of humour and misled his readers. He was also too much devoted to the teaching of Shūshi[1] and adopted his teaching so implicitly that he became a partizan in some things, especially in the doctrine of the limitless.

The Book of Changes teaches that the Great Limit begets the two activities (In and Yō). Shushi says, Limitless and so the Great Limit. If we say only the Great Limit, it is just one and we cannot derive all things from it.' But the Great Limit is the In and the Yō before their separation, the name of the one mixed ki before things are formed and within it is the supreme ri of all things, the origin of Heaven, Earth and everything. So we should put "being" first and not say "non-being." So says the Book of Changes but 'The limitless and so the great limit' is the language of Buddhism and Taoism. Laoze in his fortieth

[1] Shūshi (Chow Tun-i) ranked only second to Chu Hi in literary rank. (Mayers's Manual, p. 33.) "He wrote the "Tai-kyoku-zu-setsu," which taught that the mu-kyoku is the source of the tai-kyoku, and that by contemplation we may know man's kyoku (limit). The brothers Tei and Shushi followed him, and taught the ki-ri-shin (heart)-sei (nature) doctrine." Shundai's introduction to the Tai-gi-roku.

SOMETHING MORE ABOUT SHUSHI'S PHILOSOPHY.

By T. Haga.

[*Read April 13th, 1892.*]

The reception of my "Note on Japanese Schools of Philosophy," written with the object of showing how far Japanese philosophy has departed from that of the Teishu school, has made it evident that the views of Shushi need to be brought out more fully than was done in that paper, in order that the difference between them and those of Jinsai and Sorai may be clearly perceived. For this reason, and also because I am convinced that the writings of Shushi are as yet but imperfectly apprehended by English writers on the subject, I will try to put into English, as closely literal as seems possible to me, some of the teachings of this celebrated Chinese philosopher. I wish to be understood to be here attempting not to expound Shushi's meaning and to derive from it a consistent theory of philosophy, but merely to place before others for their own judgments a faithful rendering of some of his statements. The definiteness and clearness which characterise Dr. Knox's sketch of Shushi's philosophy will be found wanting in what follows, but not to a much greater degree than in Shushi's own text.

TAI AND YŌ. 體用

In order to throw light upon Shushi's conception of *taikyoku*, something must be written upon the place of the

Buddhist terms *tai* and *yō* in his philosophy. Although these terms are used almost exclusively by him in connection with the 'way,' they yet relate to everything.

As Shushi does not give definitions of the words *tai* and *yō*, it is difficult to know exactly what he meant by these two terms. *Tai* is literally 'body,' 'substance'; but as far as can be made out of his use of this term he seems to mean something like the true *state* of a substance, its reality. It is the whole state of everything, and includes the power which can produce *yō*. *Tai* often becomes practically identical in signification with substance.

Yō, literally 'use,' may perhaps be more intelligibly looked upon as functional activity, and includes the manifestation of things. *Tai* without *yō* is passive. *Tai* is primary and higher; *yō* is secondary and lower. But while *yō* is thus contrasted with *tai*, it is pointed out that *tai* has present in it all the powers, and that *yō* proceeds from it. Rest is *tai* and motion is *yō*,[0] but I have not come across the converse statement that *tai* is rest, *yō* is motion.

I can only attempt to give some idea of them by giving examples of Shushi's own use of these terms. *Jin*, which may perhaps be rendered by 'perfection,' is the *tai*; 'understanding' is one instance of its *yō*.[1] The 'heart' is the *tai*,—clear and bright;[2] 'anger,' 'fear,' 'pleasure,' 'care'[3]

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0 易本義曰乾坤各有動靜於其四德見之靜體而動用

1 中庸章句曰仁者體之存知者用之發是皆吾性之固有

2 大學章句曰蓋心體之明有而無內外之殊所以發必有不能實用其力而苟焉以自欺者

3 大學章句曰忿懥恐懼好樂憂患四者皆心之用而人所不能無者中庸章句曰大本者天命之性天下之理皆由此出道之體也中庸章句曰中者天下之大本原出於中而不可離天而不可易其實體備於己

etc., are its *yō* or activities. *Sei* is *tai*, the substance of the 'way.' But elswhere we are told that in *sei* are present as *tai*, perfection, righteousness, propriety and equanimity, and 'understanding.'[4] The feeling of pity is the manifestation (*yō*) of 'perfection;' the feeling of shame in wrongdoing is the manifestation (*yō*) of 'righteousness'; the feeling of respect is the manifestation (*yō*) of propriety; the feeling or sentiment of right and wrong is the manifestation (*yō*) of understanding.[5] The 'heart' is *tai*; desire is *yō*.[6] Tranquility is the *tai*; the responding to external influences is *yō*.[7] Unyieldingness is *tai* and courage is its *yō*.[8] Brightness is *tai* and the actual shining is its *yō*.[9] Thus we see that *tai* and *yō* having been distinguished primarily, what is *tai* may further be resolved into *tai* and *yō*:

The heart of man being of one substance (*tai*) with the hearts of Heaven and Earth, when the former is all righteousness the latter become freed from imperfection. Again man's *ki* becoming perfect, the *ki* of Heaven aud Earth become so, and this is the extreme 'use' (*yō*) of one's self (*tai*).[10]

THE ULTIMATE BASIS OF THE UNIVERSE, AND THE RELATION OF "RI" AND "KI." 大極 理氣

Shushi says the ultimate basis of the universe is *taikyoku* and that *taikyoku* is *ri*, but utterly devoid of form and

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4 論弟智者是語而用集己也注曰蓋性曰嘗中蓋有有仁孝箇是弟仁性來義也禮孝

5 孟子言此非之集注曰蓋心測端心而體

6 論語集注胡氏曰心義禮欲

7 性理大全朱子曰寂然是體

8 感應是用

9 孟子明之集注明者光之光

10 中庸章句集注胡氏曰心義禮欲四端心惡辭讓是非之心是非之心者仁之篇言之此不之心直言心蓋因端爲惡辭讓是非之心是非之心者仁之篇言之此不之心直言心蓋曰曰性曰嘗中蓋有有仁孝箇是弟仁性來義也禮孝

亦體一之能知之心吾中者孟者論感性即論體而端心測孟智弟論
非立用敎事此氣亦一庸明子剛語應理大體集端心測孟智弟論
有而雖亦初此亦正體章之集之集是全即注體而端心測孟智弟論
兩後有在非學順矣吾句用注用注用朱道胡氏曰心義禮欲四端心惡辭讓是非之心是非之心者仁之篇言之此不之心直言心蓋曰曰性曰嘗中蓋有有仁孝箇是弟仁性來義也禮孝
事用動其有問矣吾之曰也曰曰子曰即義心言欲禮恭是敬四端心惡辭讓是非之心是非之心者仁之篇言之此不之心直言心蓋曰曰性曰嘗中蓋有有仁孝箇是弟仁性來義也禮孝
也有靜中待之故之心蓋明剛寂然體欲本擴之之者用者仁之篇言之此不之心直言心蓋曰曰性曰嘗中蓋有有仁孝箇是弟仁性來義也禮孝
以之矣於極其氣正天者者曰即心以彼義心言欲禮恭是敬四端心惡辭讓是非之心是非之心者仁之篇言之此不之心直言心蓋曰曰性曰嘗中蓋有有仁孝箇是弟仁性來義也禮孝
行殊是外功效順則地光勇寂義心著欲禮恭是敬四端心惡辭讓是非之心是非之心者仁之篇言之此不之心直言心蓋曰曰性曰嘗中蓋有有仁孝箇是弟仁性來義也禮孝
則然其而聖驗則天萬之之然即體其其智敬四端心惡辭讓是非之心是非之心者仁之篇言之此不之心直言心蓋曰曰性曰嘗中蓋有有仁孝箇是弟仁性來義也禮孝
其必一情人至天地物休體是體欲本擴之之者用者仁之篇言之此不之心直言心蓋曰曰性曰嘗中蓋有有仁孝箇是弟仁性來義也禮孝
實其體道之於地之本光勇體欲本擴之之者用者仁之篇言之此不之心直言心蓋曰曰性曰嘗中蓋有有仁孝箇是弟仁性來義也禮孝

phenomena or sensible qualities.[11] He defines *taikyoku* to be the real substance, *tai*, of that whose motion becomes *yō*, and whose rest becomes *in*, but there is nothing to constitute it apart from *in-yō*. It merely indicates the real substance of *in-yō*, and does not include *in-yō*.[12] Thus then we see, *taikyoku* is the substance of *in-yō* and does not include it. And, as Shushi always says, *taikyoku* is *ri*. It is, therefore, clear that the substance of *ki* (*in-yō*) is *ri*. Thus, such statements become intelligible as that *ri* begets *ki*;[13] that when it is born, *ri* cannot always control it; that *ki* exists only after *ri* has come into existence;[14] that at the beginning of the universe there was *ri* alone;[15] and that wherever *ri* exists there is *ki*, but *ri* is the original basis.

Literally translated, *mukyoku nishite taikyoku* means 'no ultimate (foundation, back of all things) is the great ultimate.' We are by no means justified in translating *kyoku* as 'limit' or 'finite.' *Mukyoku* was added, Shushi says, by Shūrenkei to the *seijin*'s *taikyoku*, in order to prevent the possible misapprehension that *taikyoku* is a perceptible thing.[16] *Taikyoku*, we are told, is *ri*, but is utterly beyond

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16 極全說語語全語必語子如語他矣若否明朱之也性無雜以所太此性樞太
15 而集人類類集類有類不父類不曰氣曰馭子內陰理極乎離以極形理杻極
14 太曰欲曰曰曰曰是曰肖子曰得氣如理雜語也陽大無陰乎數圖狀大品圖
13 極源便便既有當未理有也本益如雖此却之類 既全形陽陰而解而全榮說
12 是溪是謂是初有 是管是氣這是理只時曰 生朱太而陽陽曰有朱之解
11 無恐氣之理無天 理他一彌理理不恁則謙 則子極爲也靜○此子根曰
之人也大便一地 而不氣而寓所如地其之 太曰者言即而此道曰抵無
中道亦本有物之 後得子理于生此只理問 極太有耳陰陰所理無也聲
有太安只是只先 有 乃弱氣然則是亦天 在極理 陽之謂耳極故無
箇極得是氣是畢 是 父理了既是氣蘊地 其生 而本無 而曰奧
極有無理但有竟 氣 所管 生理自而之 中陰 指體極 大無而
至形本善理此是 有 生禰 出與如昏氣 理陽 其也而 極極實
之故 而是理有 是 父他 則氣此明當 復理 本然太 正而造
理曰 已本 此 氣 賢不 理相又馭其 在生 體非極 謂太化
無 才 理 則 而得 管離間雜昏 氣氣 不有也 無極之

any perception of man. It has no form and makes no manifestation.[17] It is more ethereal than sound and smell, which are still perceptible as *ki*, although without form.[18]

The whole subject is obscured by mystical language both by Shūrenkei and by Shushi, but this much seems clear. *Ri* is the real substance or *tai* of *ki*, and is without form and manifestation. The motion of *ri* generates *yō* and its rest generates[19] *in*. By its motion its *yō* becomes manifest, and by its rest its substance or *tai* is fixed or realised.[20] (It would seem almost as if 'motion' and 'rest' were considered by Shushi as being something actually separable from *taikyoku*.) Motion and rest, succeeding each other continuously, produce *in-yō*, and by the changes and combinations of *in-yō* the five elements—water, fire, wood, metal, and earth—are generated.[21] From *in-yō* and the five elements the male and female elements are formed. And from them myriads of things spring up. The details concerning the evolution of these are mystical and not worth translating. There need only be mentioned that every thing is a *taikyoku* and that *taikyoku*, although formless, contains myriads of things in itself.[22]

Taikyoku is the 'way.' It is the true substance of the 'way.' It is in perfect rest, and is quite passive.[23] There-

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23 通易通太之萬大水太靜○太分動動太恭之形中無
者本乎極一物極火極也之極陰一極極之故在爾形
寂義寂圖物統圖木圖○用圖解兩動而圖妙唯物章無
之曰然解各體說金說之所解儀一靜說　此最句象
用寂不曰具一解土曰體以曰立靜靜曰　可爲曰
　然動天一太曰　陽所行☯焉互而太　以微蓋
　者之下太極蓋　變以也者　爲生極　形妙聲
　感中之極也合　陰立☽陽　其陰動　容而奥
　之　故也分而　合也者之　根靜而　不猶有
　體　常　而言　而　陰動　分極生　顯曰氣
　感　感　言之　生　之也　陽復陽　篤無無

fore, he points out, the *seijins* fixed the human ultimate (the ultimate standard for man) by making rest and quietness the most important ideal.[24] *Sei* is at first perfect rest.[25] Goodness succeeds.[26] *Sei* is *taikyoku* where it is at rest. When it responds to external influences, it no longer is under consideration as the substance in its resting state, but is now the activity or *yō*. The *yō* is not the whole of the 'way.' *In-yō* has forms and manifestations or appearances and must be classed in a lower category than *taikyoku*.[27] It is only fitted for the *yō* of forms and sensible qualities, and does not serve for all the 'uses' or *yō* of *taikyoku*. It must therefore be classed in the lower category of 'utensils' or common instruments; but 'utensils' are also the 'way,' and the 'way' is also 'utensils' (thus is seen the original oneness of *in-yō* and *taikyoku*).[27] The substance and activity, the *tai* and *yō*, are inseparable, and are from one source; the apparent and the obscure have no boundary.[28]

The above is a synopsis of Shūrenkei's *Taikyokudzusetsu*, and of Shushi's exposition of the diagram in it, and of his two supplementary remarks on the same subject. Where these are not clear, other of Shushi's writings have been consulted.

It will be evident that this interpretation of *taikyoku* is opposed to Shushi's own statements, that there is nothing

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24 太極者常爲圖主鮮焉曰渾然全極於體是而乎靜立也所性立大極圖說自有附錄曰人極之靜

25 性理大全書子曰夫善之所者性命之理立也動而靜

26 大極者不可謂自然之性與理也

27 大極圖說附錄曰安得無兼上陰陽之變化而言之

28 而大極圖說附錄曰程子曰須形而下之器而後有此理亦形而上之道器無形而下之器亦形而上之道而無形之理光明之理光明之理亦形而上之道而無形之理光明之理亦形而上之道而無形之理光明之理亦形而上之道而無形

called *taikyoku* which can be separated from *in-yo*, and that *taikyoku* is *ri*,—*taikyoku* is *ki*. Thus, in spite of his words quoted above, he says distinctly that the phrase, *taikyoku nishite mukyoku* means that there is extreme and ultimate *ri* in non-existence (that is beyond the existence known by form and phenomena), and that *mukyoku* means that there is no form, and *taikyoku* that there is *ri*,[29] etc. Hence arises the objection of Riku-Shozan, that Shushi makes non-existence the basis of the cosmos; and hence also the difference between Shushi and men like Ra-Seian[30] and Kaibara Ekiken, according to whom everything has a dual existence, (that is Existence itself and the Law of existence) neither *ri* nor *ki* exists by itself, and the existence of *ri* as an entity without form and phenomena is inadmissible. To conceive a thing without form and without sensible qualities to be in the state of motion and of rest, was no doubt the great difficulty for these men.

It is said that Shūrenkei got his diagram from one Boku-Hakuchō (穆伯長) and he from Chin-Kii (陳希夷), both of whom are said to have been followers of Laotse; although Shushi believed that the picture could not have been made by any philosopher less than Shūrenkei himself, and that therefore such stories are unworthy of credit.[31] Again, it is said that Shūrenkei was a pupil of a Buddhist priest, Jugai

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29 性理大全朱子曰無極而太極極而大

30 因知記曰之中有箇至極之理以言合太極與陰陽兩儀而後可

31 嘗合之乎其爲物也果二則方其末

嘗讀朱內翰震進易說謂此圖之傳自陳摶种放穆修而爲胡氏作序又以爲穆之學者此特先生非止一師耳非其學至加及先生所自作而非有受於人者也夫以穆之學又何疑之此固以先生之所聞之所得於文公之是然後知嘗疑其果先生之所自作而非有受於人者云々

(壽涯), who lived in a temple called Kakurinji (澗州鶴林寺), near which a shrine of Shūrenkei used to stand, perhaps does so still.

It is also said that the pictures of *kato* (河圖) and *rakusho* (洛書), which Shushi brings forward in explaining the Classic Eki (Book of Changes), are an invention of this Chin-Kii. Indeed, Shushi himself says that the other four pictures he brings forward as the invention of the mythical *seijin*, Fukki (伏羲), were handed down to him through several people from this Chin-Kii. It is the almost undivided opinion of scholars that these four pictures also owe their origin to the inventive genius of Chin-Kii himself.

The ideas of *tai* and *yō* are said to be a borrowing from Buddhist writers. Even the language describing them is said to have been that used by Buddhists. *Mukyoku nishite taikyoku*, no 'ultimate (basis) and so the great ultimate,' is said to occur in a Buddhist book, Kegon-Hōkaikwan (華嚴法界觀). The two phrases, *tai-yō ichigen* (體用一源), 'substance and activity are from one source,' and *gembi mugen* (顯微無間), 'the apparent and the obscure have no boundary,' are said to occur in a Buddhist book, Kegon-So (華嚴疏). Certainly Shushi's language[32] is often very much like that of Buddhist writings.[33] Making rest and quietness the ultimate goal of man and the mode by which this end is achieved, namely by entirely getting rid of desires, must at once bring to mind the perfect rest of Nirvāna. It is possible that Shūrenkei, the author of the diagram, meant more nearly what is conveyed by the literal translation of *taikyoku nishite mukyoku*, which is very much like Laotse's idea of existence being non-existence. The whole language

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33 32

用有應同一經一歸華 有而無森有而一大明本本生者序法裝 然而沖
不一群道法中對曰嚴 含有羅形已眞虛廓已體身一曰界休 已萬漠
具法機性必凡謂體經 容邊萬貌然之寂微米也心切法觀華 具象無
體無外內學此用旨 萬際千而無境唯廣盡從之衆界門嚴 森朕

of Shūrenkei's text and Shushi's interpretation is mystical. Shushi goes into an explanation of the concentric semicircles found in Shūrenkei's text, and of the direction of the curved lines joining the circles representing the five elements, but it is difficult to say how far such explanations were meant to be taken as any part of rational philosophy.

THE ORIGIN OF EVIL.

Ki is not essentially evil. When it is first produced it is quite free from defect. But *in* and *yō* entangling with each other, attracting and repelling each other, coming and going to and fro, rising up and falling down, ever since the beginning of the world, there is naturally produced flat and plain spots, and rugged and inclined spots, the good and bad portions of *ki*.[34] The different portions of *ki* are bright and dark, clear and turbid, pure and impure, free and obstructed, strong and weak, fine and coarse (in quality), good and bad, clever and foolish, thick and thin, deep and shallow, direct and oblique, resisting and yielding, quick and slow, etc. The inferior portions of *ki*, that is, portions which are either dark, turbid, impure, obstructed, weak, coarse, bad, thin, shallow, oblique, yielding, do not come under the control of *ri*. On the contrary, these inferior portions of *ki* restrain

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34

語類問二氣相反相軋相合相乖有平易處有傾側處自然有善有惡惡有善何足恠故禀氣形者有惡不善也曰此却無過又曰人所禀之氣雖天地之正氣但濃來滚去便有昏明厚薄之異蓋氣是有形之物便自有美有才是有形之物便自有惡

性理大全朱子曰二氣其始固無不善然騰倒到今日則其善惡却各自有會處此則其雜也久矣但其運行交錯上智下愚所以分也

the *sei* and render it bad and-hurtful.[35] *Ki* is the active agent; and *ri*, which resides in it, becomes completely dependent on it. Desires, which prove so powerful in interfering with *sei*, are also from *ki*. Evil does not arise from *ki* not receiving *ri*, or from the absence of *ri*, but from *ri* becoming subjugated by the bad portions of *ki*. Although *ki* alone and not united to *sei* does not constitute the active man, it has yet the power to make even *sei* bad and hurtful. Evidently, therefore, evil is originally from *ki*, according to Shushi.

The Kogaku school's objection to Shushi rests on this point. They argue that since *ri* and *ki* are ever together, and since every property and every motion of *ki* has a reason (*ri*), there must be some kind of reason (*ri*) why *ki* is sometimes so bad, and why it should exert this interfering or restraining force upon *sei* (*ri*).

Now the way to restore the original state of *sei* is evidently by conquering one's selfish desires and modifying one's *kishitsu*.[36] Only when the *kishitsu* has been completely reformed,—so that no defect remains in it and all selfish desires have been completely rooted out of it, and thus the whole body has become completely under the control of *ri* and in unison with it,—then only is a man perfect. So great is the use of conquering desires, that should a man

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35

理學類編問惡是氣稟程子朱子云亦不可謂之性何也性子曰既是氣稟便牽引那性不好蓋性只是惡乃氣所汩沒上又曰性本善今水爲泥沙所混不可復正如水作水

36

中庸章句曰呂氏曰君子所以學者爲能變化氣質而已德勝氣質則愚者可進於明柔者可進於強不能勝之則柔不能立矣雖有志於學亦愚不明柔不論語集註曰克己(私欲)復禮爲仁不可勝用矣

流行而仁不可勝用矣

不以爲難則私欲淨盡天理

attain to this state of perfection he would convert the world.[87] Although the Teishu school encourage the study of *ri* in all things as the means of understanding *ri*, this study of things is to be done only by contemplation and can end only in contemplation. It is taught that if a man persistently endeavour to understand *ri*, there will come a time when the reason of everything will be clear.[88] And further, that man's planning and scheming are injurious to the attainment of good. As all study about the *ri* of things is vain when one's heart is ruled by desires, the first object must be the getting rid of desires. Such a doctrine is very nearly identical with the teachings of Buddhism, whose characteristic way to freedom from doubt and heresy lies through freedom from impurity and from evil longings of all kinds.

KISHITSU NO SEI.

As my statement that *kishitsu no sei*, although affected by *ki*, is originally only from *ri*, and that its distinctness from *honnen no sei* cannot be maintained in detailed application, may present difficulty to some, I will give here a few words in explanation. *Kishitsu no sei* being used for man's actual present nature, it should logically be a combination of *ki* and *ri*, yet Shushi maintains that it is from *ri*, and still remains as such. He says *kishitsu no sei* is *tenchi no sei* (*honnen no sei*), and that if it is not from *tenchi no sei* then it loses all foundation.[89] He teaches that *sei*, though affected

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89

不從這裡出來若之

性亦只是從這裡有甚氣質出來若之

又曰性只是理氣質過箇便好

底之性天地之性氣質之性却是那裏這便是天

地之類曰得氣質之性從只是之間雜思慮

語類養靜坐多少思善萌多

則曰計較如何思善一日

又少之間動多少善

語類曰靜坐無思慮

之語曰知之說性善

此謂知之至也

謂之物格

88

大用無不到而一旦豁然貫通

無爲之久而物之理明

則久而一句至於用力

大學章句之明明德

87

也言其下之人皆克己復禮

天下之效也皆克己復禮

又曰一日克己復禮則天下歸仁焉

and modified by *ki*, still remains as *sei*, and does not form a combination, or a third existence, in which both *ki* and *ri* would be originally present. He teaches that the modifying effect of *ki* is not so deep-going as essentially to modify the *sei*, or that *ki* does not enter into the constitution of *kishitsu no sei*. *Sei* remains as *sei*, and *ki* remains as *ki*;[40] hence the name of *kishitsu no sei*. The modifying action of *ki* is a force applied externally. Its effect is only on the surface. Thus, Shushi illustrates the state of existence of *sei* in *kishitsu* by glowing charcoal imbedded in ash, the dulling of a mirror on the surface, the bright sun veiled in mist, a brilliant jewel in turbid water, etc. *Kishitsu no sei* is *sei* (*ri*) existing within *kishitsu* (*ki*). *Honnen no sei* is the real, transcendent, formless state of *sei*.

Shushi's *kishitsu no sei* is something like an Englishman settled among Japanese: he must become modified or affected in thought and manners by Japanese surroundings (for as Shushi says, *ki* is strong, *ri* is weak); but he does not therefore become a combination of English and Japanese: his blood is free from mixture. Take away the influence of Japanese associations and he will be again the pure Englishman. The union of *sei* and *kishitsu* is something like marriage between the two. It is not the becoming one individual. Hence the objections of men like Kaibara Ekiken to Shushi's division of *sei* into the two classes; for these men see the difficulty in determining where *honnen no sei* itself exists, since it becomes *kishitsu no sei* so soon as it exists in *ki*.[41]

When we come to the application of this division of *sei*, Shushi says "*sei* is originally good but is made impure by

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40 不性然其性氣氣又
相自氣方却有已曰
夾是自在常不有未
雜性是氣在存此有
亦氣中雜而性此

41 分之性然受性性何苟氣之之之分有古大
而性亦則天亦乎處非質性性性折一今疑
爲耳是氣地豈氣稟氣之亦其與於性之錄
二不天質者非質受質稟豈天氣天不人曰
可地之耶所之天則乎非地質地要只蓋

ki. This is like water made turbid by mud, which must still be called water." Because the Teishu school maintain that *sei*, when influenced and modified by *kishitsu*, still remains *sei*, and do not recognise that *kishitsu no sei* is a combination of *ri* and *ki*, therefore they are forced to make such strange statements as that '*sei* is *ki*,' '*ki* is *sei*,' and Evil must also be *sei*.'[42]

HEAVEN.

Although Shushi says repeatedly that Heaven is but *ri*, yet he makes statements that cannot be understood without some kind of Supreme Being existing. For instance, though Heaven does not see and hear directly, it is said to see and hear through men's hearts.[43] Again when a king is very tyrannical to his people, Heaven decides whether he should remain as king or not. So long as it is Heaven's order that he shall remain as king, the people must respect and obey him, but on the day when this order is reversed the tyrant king loses all claim to be longer a king. A righteous subject has now right to dethrone him and to become king himself in his stead, provided the whole nation be rejoiced at this change. Whether Heaven approves or not of such a change is known through people's hearts.[44] When people are rejoiced at the fall of the old king and the election of the

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42

性氣不程子曰性即有物自然而然

本所可子生性善相如君命民

善汩不曰之性惡惡此君臣心

今正喚生之惡而齊日容氏

乃如作之謂不然是一之

水水惡謂水生是容日

爲亦性人性有性是日

混是性中生性善之集

沙此性元氣即有善性子

所性混爲氣理兩有善性孟

43

孟子曰天視天聽民之所欲天與之民受之天之視聽自我民視聽

44

孟子曰天視天聽民視聽民之所欲天必從之

集注張子曰天聽無形其實理而已

註張子曰天聽無形其實理而已

日之命周子曰天命人心之公而已

命君髮一集則於民注天與之曰天

紀當日註張與之視天

紀當日之張與之視天

紀當日之張與之視天

紀當日之

new, Heaven's mind is satisfied at the change. Heaven here and elsewhere, is made to have both heart and mind. It is the heart of Heaven and Earth that everything should grow up and multiply.[45] Shushi said indeed that there is no personal God who literally appoints, protects, etc., as written in the Classics. But elsewhere he asserts that to say there is no Lord (主宰) in Heaven is wrong;[46] and in spite of his explaining away the words in the Classics as being metaphors, he himself takes special care to use such phrases as that 'Heaven let the human race down (on earth); Heaven appointed the *seijins* to govern and teach the people how to recover the original state of their *sei*, etc;[47] Heaven gives, man receives; and so forth, when it would have been very easy to avoid such phrases and use others not liable to mislead. He says the word 'Heaven' in the Classics means sometimes the blue heaven, sometimes the Lord, and sometimes simply *ri*,[48] and it is therefore clear that it to him does not always mean *ri*. But it would appear from his writings that there are also these three meanings for Heaven in Shushi's own use of the word. All this seems to show that he had a vague idea of something presiding over the world, (in his language, *shusai* 'Lord'), who is a kind of First Cause, and prior to *taikyoku*. There is a possibility that Shushi

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45 孟子集註天地以生物爲心

46 語類巳使是那箇謂天運轉周流不已

47 語類人在那裏說天降生民可見人過全無裏主之罪惡又不固有說

48 語類箇而今說天理分明底道理人全無箇主判斷之者看得箇說主宰者也有說訓詁字曰人有

極神農黃帝堯舜所以繼天立人

治而教之以億兆之君師則天伏羲

必命之以性者出於其間則智

能盡其性矣大學章句序一有聰明睿智

大學章句序之自仁義禮智

之則統萬物之理

這裏要緊處不過是箇天理人欲

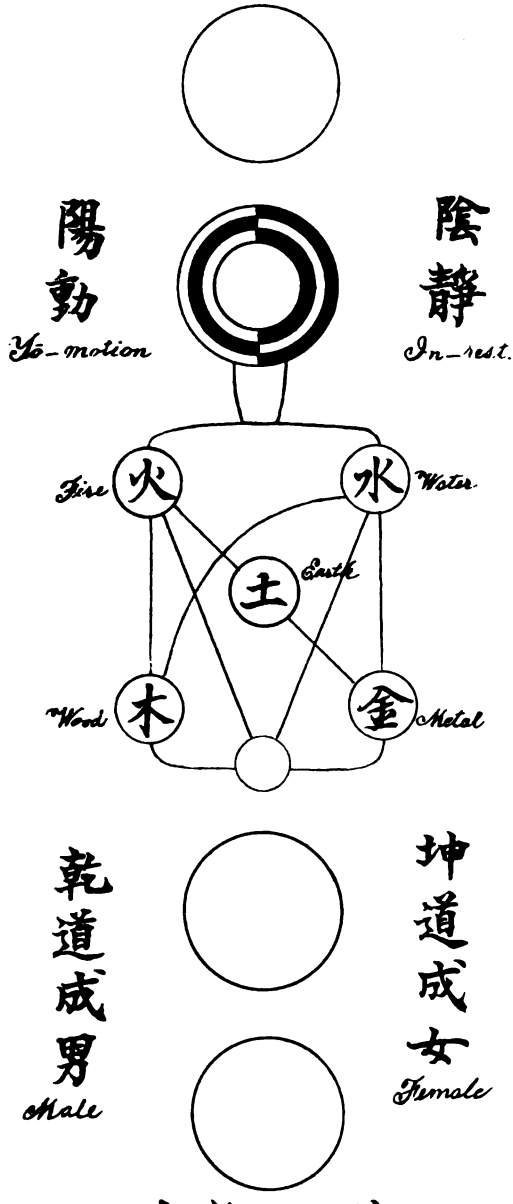
可說不可說

used such language in order not to raise the prejudice of the popular belief. But this supposition is difficult to accept, because Buddhism, which does not recognise any true Creator, was accepted by the multitude in Shushi's time. The only likely explanation is that he was trying to reconcile his teachings with the writings of the Classics, whose language evidently assumed the existence of a Supreme Being. No doubt he made every effort to smooth away the differences between the Classics and his own teachings.

The world is destroyed periodically after a certain great number of years, when men become hopelessly wicked, and then a new world begins again; but Shushi is not clear whether each world begins spontaneously, or whether worlds succeed each other, the first having been started by some Cause. In this matter the Teishu school strongly resemble the Buddhists, who teach that the world is periodically destroyed by water, fire, or wind, and a new world begins again. Yet it is not strictly a new world, for the beings in the new world are a kind of continuation of those who lived in the preceding world.

太極圖

Taikyoku Diagram.



萬物化生

Generation of Myriads of Things.

Curtis.

CHÔMEI AND WORDSWORTH: A LITERARY PARALLEL.

By J. M. Dixon, M. A., F. R. S. E.

[*Read, Feb. 10, 1892*].

There are few countries upon which nature has lavished so much beauty as Japan, and her inhabitants have not shown themselves heedless of their privileges. In the domain of art the beauties of nature have been reproduced by Japanese artists in a way that has delighted the world, and effected a revolution in Western ideas of what constitutes beauty in ornament. In the domain of literature the Japanese have shown less power and originality. If the inhabitants of Europe have been fettered by conventionality in expression, this has been still more the case in Japan. It may be said with truth that except in a small department of composition, having an affinity with our sonnet,[1] they have furnished nothing new or fresh in the realm of literature. But still we should expect to find a certain amount of truthful utterance respecting the aspects of nature, such as we find in English poetry since the time of Cowper. BeforeCowper's time classical and Hebraic influences had been too strong in Europe for the growth of what we might call in a restricted sense "natural religion." A recluse in European countries,

[1] 'The beautiful rhymeless short ode of Japanese poetry, for the knowledge of which we are indebted to Mr. Chamberlain.'—Theodore Watts on the *Sonnet* in *Encyclopædia Britannica*, 9th ed.

till Rousseau took up his abode on St. Peter's isle in the Lake of Brienne, was always a religious devotee, a man of introspective habits who retired from the world to make up his account with his Maker. This habit of theological introspection, it is true, is absent in our Elizabethan poets, but then classical traditions were all powerful in their interpretation of nature. Shakespeare's world is not simple outside nature as he saw it, but a world semi-Italian in its ideas and vocabulary. The prettiest song which he wrote is the sevenade in *Cymbeline*; and it opens with a classical conceit:—

Hark! hark the lark at heaven's gate sings,
And Phœbus 'gins arise
His steeds to water at those springs
On chaliced flowers that lies;
And winking Mary-buds begin
To ope their wondering eyes:
With everything that pretty is, my lady sweet, arise;
Arise, arise!

It was Wordsworth's mission in English poetry to remove this foreign element of nature interpretation, and with a mind wholly receptive to study nature at first-hand and record the impressions which his mind received. He wished as much as possible to be a child again, and with this view he ran a tilt against theological dogmas like that of Original Sin which seemed to him to cast a slur upon nature. He thus ignored in his treatment of the world the problems of sin and atonement, and brought himself in touch with all such as, in any land and conforming to any religion, sought to enjoy the works of the great Creator. When, therefore, we find a Japanese literary character of the 12th century retiring to the hills and seeking to find communion with the mountains, the streams, with animate and inanimate life, we at once think of contrasting him with our high-priest of nature. This is why I have linked together Chōmei and the bard of Rydal Mount. Both were recluses; both were devout admirers of nature, and receptive in their attitude towards

her. Chōmei, the son of a priest in the province of Yamashiro, was born in the middle of the 12th century. Disappointed in his hopes of worldly promotion, he sought retirement in the sequestered village of Ohara. Afterwards he became for a time the guest of Sanetomo at Kamakura, but again withdraw from the world, passing the remainder of his life in the province of Etchū. He is highly esteemed as a poet, and many of his pieces are popular. The passage offered in translation gives a very fair example of his philosophy and style. Though a good Buddhist, he does not seem to have been in any way a devotee, but rather to have mildly conformed with the requirements of that religion, whose tenets were no doubt congenial to him. In one passage of the extract occurs a reference to sin, the appearance of snow suggesting to him sins which accumulate and then vanish away. To Christians the reference at once recalls the passage in Isaiah in which the promise is made that "sins which are as scarlet shall be made white as snow." But there seems little beyond a surface connection between the two statements. According to the Buddhist creed, sins are washed away by devotion, by prayer, and by good deeds. Chōmei confesses that he was lax in attending to the rites of his religion; certainly Wordsworth was the reverse of punctilious in these matters. Both of them seem to have found their chief delight in studying the varying aspects of nature. But Wordsworth's attitude towards society was infinitely more sympathetic and kindly, while in the background of his solitary walks and musings among the hills were an affectionate household and the realization of all that is most delightful in home life. No doubt he was out of touch with town life, and disliked the din and rush of the city, but he was not indifferent to the sufferings and struggles of humanity and would have rejected the callous indifference of Chōmei as animalistic. Many of Chōmei's moral musings, indeed, remind us strongly of the sentimentalism of a mock-antique balled like *Edwin and Angelina* :—

Alas! the joys that fortune brings
  Are trifling and decay,
And those who prize the paltry things
  More trifling still than they:
And what is friendship but a name,
  A charm that lulls to sleep—
A shade that follows wealth or fame,
  But leaves the wretch to weep.

The sentimentalism in each case is shallow and unsatisfactory, the misanthropy is a temporary phase of mind, the result of pique. "Life," says Chōmei; "is empty as the cast-off shell of a cicada." Here he speaks not as a philosopher but as a disappointed man of the world. His blood does not grow richer and warmer by his secluded life among the hills; it seems to grow thinner and colder, and his whole being looks forward to the happiness of a mere passivity. It is not the gladness that accompanied the development of Wordsworth's life, spent also avowedly in conformity with nature, and with a desire to prove as receptive as possible to its influences. On his sixty-third birthday Wordsworth writes in a different strain from Chōmei, very at nearly the same age:

Teach me with quick-eared spirit to rejoice
In admonitions of Thy softest voice!
Whate'er the paths these mortal feet may trace
Breathe through my soul the blessing of Thy grace,
Glad, through a perfect love, a faith sincere
Drawn from the wisdom that begins with fear,
Glad to expand.

This last phrase seems to sum up the whole divergence. Wordsworth's life among the hills was a life of yearly expansion: Chōmei's was confessedly spent in a contraction that was finally to end in absorption in the Infinite. Self was to the latter a "floating cloud," a "drop of dew," soon to melt in the infinite and be heard of no more. The ideal of

his solitary life was tranquillity, the absence of worry, offence, and anxiety. He refrains from all attempts to proselytize, or preach to others. "These remarks of mine," says he, commenting upon the satisfaction he finds in living so simple a life, "these remarks are not intended as a sermon addressed to the well-to-do." Here comes in the national indifferentism which so often strikes the Western mind as strange, and which, though pleasing at first because of its inoffensiveness, is in the end irritating from its complete lack of moral glow and strength and warmth. We are reminded of the old question of Cain; "Am I my brother's keeper?" It is the æsthetic as distinguished from the religious frame of mind. Now, Wordsworth is not an indifferentist, but has always a didactic aim more or less in view. At the close of the *Prelude* addresing Coleridge, he writes :—

> Prophets of nature, we to them (the nations) will speak
> A lasting inspiration, sanctified
> By reason, blest by faith : what we have loved,
> Others will love and we will teach them how;
> Instruct them how the mind of man becomes
> A thousand times more beautiful than the Earth
> On which he dwells.

No indifferentism is to be found in an utterance like this. Again, in Chômei's attitude to flowers and trees, we find an affinity to the ways of the modern æsthete, pleased with the hue or curve of a bough or blossom. "On my way home from the moor of Amazu," he remarks, "I am frequently rewarded by finding a choice bough of cherry or maple or a cluster of fruit, which I offer to Buddha or reserve for my own use." Was Cain's offering of a similar gift to Jehovah rejected purely because of the mental attitude of the giver, or because of the nature of the gift? Is there any underlying moral in the Bible story? Can culled flowers and fruits be made to speak the language of moral truth?

Or is their mission in this respect limited to the department of æstheticism? It is certain that Wordsworth had a repugnance to the plucking of flowers and twigs, as if it were a kind of sacrilege :—

Then up I rose
And dragged to earth both branch and bough, with crash
And merciless ravage: and the shady nook
Of hazels, and the green and mossy bower,
Deformed and sullied, patiently gave up
Their quiet being.

The remembrance struck him afterwards with pain, and he proceeds to advise his daughter to leave such scenes in peace :—

Then, dearest Maiden, move along these shades
In gentleness of heart; with gentle hand
Touch—for there is a spirit in the woods,

The beauty of a creature is, so to speak, its own, and is independent of locality, while the beauty of the vegetable world belongs to the creative spirit of the Universe. Here comes in the Pantheism of Wordsworth, a Pantheism strictly conservative of the individual as a free agent, and dealing directly with the world of things. It was a protest against an irreverent attitude towards mountains, groves, and brooks, all of which silently interpret the mind of their Creator, if we will but read the lesson :—

One impulse from a vernal wood
Will teach us more of man,
Of moral evil and of good,
Than all the sages can.

It will be found that, when Wordsworth uses the objects of the vegetable or inanimate creation for a poetical purpose, they are never dissevered from their surroundings. It is the "primrose *by the river's brim*" : "the meanest flower *that blows*".

A host of golden daffodils,
Beside the lake, beneath the trees,
Fluttering and dancing in the breeze.

Or, when he talks of the modest Celandine :—

Thou dost show thy pleasant face
On the moor, and in the wood,
In the lane—there's not a place,
Howsoever mean it be
But 'tis good enough for thee.

The west, both to Chōmei and to Wordsworth, was a quarter from which came comfort in meditation. The valley in which the Japanese sage lived opened out, he remarks, to the west, the home of the happy, whence comfort came to him in his meditations. To Chōmei it was a mild influence, significant of complete rest hereafter, when his soul would be lost in the infinite ; while Wordsworth refers to it as a goal, whither he is travelling and where possibly will be granted a larger and a fuller life :—

Stepping westward seemed to be
A kind of heavenly destiny ;
I liked the greeting ; 'twas a sound
Of something without place or bound ;
And seemed to give me spiritual right
To travel through that region bright.
The voice was soft, and she who spake
Was walking by her native lake :
The salutation had to me
The very sound of courtesy :
Its power was felt ; and while my eye
Was fixed upon the glowing Sky,
The echo of the voice enwrought
A human sweetness with the thought
Of travelling through the world that lay
Before me in my endless way.

It will be observed in the extract that Chōmei refers to the cuckoo as having a mournful note. In this concep-

tion of the bird he follows the Chinese tradition, for in Chinese poetry it is always spoken of as having a sad and mournful cry. There is a transmigration story in Chinese literature, which makes the Emperor Bō of Shoku turn into a cuckoo after death, whence its Chinese name of Bō-tei. According to another tradition it tears its mouth in crying and blood issues forth, whence a second name given to the birk, *Tei-ketsu* or "Wailing-at-blood." Japanese writers have not clung to this foreign conception of the cuckoo, but, on the contrary, are loud in singing its praises as a herald of joy. In one of his poems Chōmei himself speaks of it as a pleasant visitant, much in the manner of Michael Bruce (or John Logan ?)—"I was struck dumb with pleasure for a few minutes after hearing the cuckoo's note, sounding for the first time in the year."

The bird is also credited with cherishing deep love for its mate, and the fact that it does not hatch its young is frequently commented upon. In Japanese poetry we find it usually associated with the moon, the *Tachibana* or orange shrub, with rain, with clouds, and with the *Uyonohana* (*Dendzia Scrabra*). Several of the valleys in the neighbourhood of Kyōto, where the bird is rare, were noted for its song, and thither parties used to go when spring-time returned to enjoy the luxury of hearing its notes.

In Mr. Chamberlain's delightful volume, *Japanese Classical Poetry*, two lyrics culled from the *Manyefushifu* (Manyōshū) will be found, which address the cuckoo in the most friendly terms :—

Though through the livelong day
Soundeth thy roundelay,
Never its accents may
Pall on my ear :
Come, take a bribe of me!
Ne'er to far regions flee :
Dwell on mine orange tree,
Cuckoo so dear! (p. 95.)

The above is anonymous. A few pages further on occurs the second lyric, witten by Hironoha, and bearing the date, A. D. 750 :

Near to the valley stands my humble cot,
The village nestles 'neath the cooling shade
Of lofty timber ; but the silent glade
Not yet re-echoes with the cuckoo's note.
The morning hour e'er finds me, sweetest bird !
Before my gate ; and, when the day doth pale,
I cast a wistful glance adown the vale ;
But e'en one note, alas ! not yet is heard,
(p. 113.)

Still again, among the *Short Stanzas*, (p. 119) in a piece attributed to Hitomaro, the cuckoo is associated with the wisteria as representative of early summer :—

In blossoms the wisteria-tree to-day
Breaks forth, that sweep the wavelets of my lake :
When will the mountain cuckoo come and make
The garden vocal with his first sweet lay ?

This is far from the Chinese mythological and classical-Japanese notion, which makes the bird a herald of death and dissolution, whose note summons a soul to begin the ascent of the mountain of death. The same struggle is noticeable in English poetry between an unpleasing foreign and a pleasant indigenous conception of the cuckoo. Readers of Horace will remember the passage in the first Book of his Satires (VII, 31), where, in a street encounter, a passer by calls a rustic, *cuculum* that is, "lazy lubber," by way of contempt [2] :—

Magna compellans voce cuculum.

In Drayton we discover this South-European conception, which had come to him through Italian literature :—

"No nation names the cuckoo but in scorn,"

[2] Compare the modern Scotch *gowk*='stupid fellow.'

It was regarded as a type of selfishness and of unwarranted intrusion into domestic privacy and harmony. The coarse allusions to the cuckoo as an adulterous bird, so common in Elizabethan poetry, die out in the XVIIIth century. The term "cuckold," used contemptuously for *weakling*, lingered on, and is perhaps last to be met with in Burns's drinking song, *Willie Brewed a Peck o' Maut.* A recent editor of a book of college songs has been censured for reproducing the term :—

Wha first shall rise to gang awa.
A cuckold, coward loon is he !

Milton in his first sonnet names it 'rude bird of hate'—he calls upon the nightingale to sing :—

Now timely sing, ere the rude bird of hate
Foretell my hapless doom in some grove nigh.

In another sonnet he classes it contemptuously with asses, apes, and dogs, animals which have a harsh and unpleasing cry :—

When straight a barbarous noise environs me
Of owls and cuckoos, asses, apes, and dogs.

John Bunyan likewise treats the cuckoo very disparagingly, blaming it because it is neither the first to welcome our spring, nor bring us its first tokens. He calls it a "yawling-bawling cuckoo":—

'And since, while here, she only makes a noise
So pleasing unto none as girls and boys,
The Formalist we may compare her to,
For he doth suck our eggs and sing "Cuckoo"!

It must be remembered that the earlier English conception of the bird, like our later and present attitude towards it, is altogether different, being thoroughly friendly. The first English song set to musical notes addresses the cuckoo as a cheerful bird, the messenger of spring :

Summer is y-comen in,
  Loud sing, cuckoo :
  Groweth seed
And bloometh mead
And spring'th the wood now :
  Sing, cuckoo.
  * * *
  Merry sing, cuckoo !
  'Cuckoo, cuckoo !
Well sing thou, cuckoo !
Nor cease thou never now.

The poets of the XVIIIth century reverted to this earlier attitude :—

Sweet bird, thy bower is ever green,
  Thy sky is ever clear,
Thou hast no sorrow in thy song,
  No winter in thy year !

This freshest and brightest of XVIIIth century lyrics, originally published by Logan in 1770, is now generally ascribed to his friend Michael Bruce. This lyric is a landmark in English poetry, the bugle-note of a new era. Its influence on Wordsworth was undoubted. That a poet should dare to adress seriously so commonplace a thing as a cuckoo, *Scottice* "gowk," otherwise "fool," was a new thing in polite literature. Here we establish a community with the nature lovers of old Japan, who made excursions to the green valleys of Yamato that they might listen to the cuckoo's voice. It is a noticeable fact that Miss Wordsworth, in her life of her relative, brings in his attitude towards the cuckoo as illustrative of his treatment of nature. While Tennyson, speaking of the bird, uses the language of mere sensation :—

The cuckoo told his name to all the hills,

Wordsworth speaks in the language of ideas,

O cuckoo, shall I call thee bird,
Or but a wandering voice ?

Our present attitude toward the bird may be summed up in the lines of a recent contributor to the London *Spectator*; and it will be seen how closely this attitude approaches that of the Japanese, as unaffected by Chinese influences:—

Forbid the solace of home to know,
  Or dutiful ministry's crowning grace,—
Some twist primeval has hardened so
  In the long career of a vagrant race;
    Though he build no timely nest,
    Or semblance of a nest,
    In the way admired and best,
His lay enchains the ear
With an elfin power to cheer,—
    Cuckoo! cuckoo! cuckoo! cuckoo!

Note.—The Japanese cuckoo, of which there are four varieties, is migratory like the European bird. These sub-orders are:—
CUCULUS CANORUS, L. (Common Cuckoo)—Kakko, Ōmushikui; CUCULUS INTERMEDIUS, Vahl. (Himalayan Cuckoo)—Tsutsudori, Ponpondori; CUCULUS POLIOCEPHALUS, Lath. (Little Cuckoo)—Hototogisu, Tokiwadori, Imosedori; CUCULUS HYPERYTHRUS, Gld. (Amoor Cuckoo)—(wintering in China and the Philippines) Jyu-ichi, Jihishinchō. Of these the third variety is undoubtedly the poets' favourite. It is velieved to deposit its eggs in the nest of the *Uguisu* (Cettia cantans) or Japanese nightingale. The Common Cuckoo makes use of the nest of the Japanese Bunting (Hōjiro). Our English cuckoo lays its eggs in the nest of the wagtail, which makes an affectionate foster-mother; and also in the hedge-sparrow's nest. The words of the Fool in *Lear* will be remembered:—
  The hedge-sparrow fed the cuckoo so long
  That it had its head bit off by its young.

A DESCRIPTION OF MY HUT.[1]

By J. M. Dixon.

[*Read February 10, 1892.*]

Note.—For the original draft of this translation, as well as for much valuable assistance in the explanation of details in the translation and in the introduction, I must acknowledge my great indebtedness to Mr. K. Natsume, a student of English Literature in the Imperial University.

The water incessantly changes as the stream glides calmly on; the spray that hangs over a cataract appears for a moment only to vanish away. Such is the fate of mankind on this earth and of the houses in which they dwell. If we gaze at a mighty town we behold a succession of walls, surmounted by tiled roofs which vie with one another in loftiness. These have been from generation to generation the abodes of the rich and of the poor, and

[1] The Japanese title is Hojo-ki. The term *Hojo* literally signifies ten-feet-square and occurs first in a Buddhist work, the *Uima-Hyo*, where Uima is said to have collected a vast audience in a room which was [illegible] *hojo*. The term came to be used for a priest's hut, then, as is so common in Japanese phraseology, for the priest himself. The term is frequently met with in the literature of the Tokugawa times as applying to the old rector or keeper of a Buddhist temple.

yet none resist the destructive influence of time. Some are allowed to fall into decay; others are replaced by new structures. Their fate is shared by their inmates. If, after the lapse of a long period, we return to a familiar locality, we scarcely recognize one in ten of the faces we were accustomed to meet long ago. In the morning we behold the light, and next evening we depart for our long home. Our destiny resembles the foam on the water. Whence came we and whither are we tending? What things vex us, what things delight us, in this world of unreality? It is impossible, truly, to say. A house and its occupant, changing perpetually, may well be compared to a morning-glory flecked with dew. Sometimes it happens that the dew evaporates and leaves the flower to die in the first glare of day; sometimes the dew survives the flower, but only for a few hours; before sunset the dew also has disappeared.

During my two-score years of existence I have been fortunate enough to witness several notable spectacles. On the 28th day of April in the third year of Angen (1177), during a night of wind and storm, a fire broke out at eight o'clock in the evening in the south-eastern part of the capital,[1] and spread rapidly in a north-western direction. One portion of the palace buildings, with the Official College and the Home office, were before morning reduced to ashes. The conflagration was supposed to have had its rise in a temporary structure used as a hospital, and to have spread from this quarter northwards in the form of an open fan. Cloaking the distant houses in smoke, it licked the intervening ground with greedy tongues of flame. The sparks, dispersed aloft, and of dazzling brightness, illumined the sky for miles around. Amidst this ruddy chaos, the flames might be seen, urged on by the wind, leaping over whole blocks at a time, and finding a lodgment in a[illegible] quarter. The inhabitants ran hither and thither in [illegible] of dis-

[1] Kyōto.

traction. Some fell down insensible, choked by the smoke; others perished in the flames. Such as had the good fortune to escape with their lives lost all their property. An incalculable amount of treasure and of wealth was destroyed. Thousands of people and an immense number of cattle fell victims to this merciless conflagration. Surely it is futile for a human being to expect immunity from harm in so dangerous a spot as a city!

My next experience was also remarkable. On the 29th of February in the 4th year of Jisho (1180), a whirlwind arose in Kyogoku,[1] and drove on with terrible fury towards Rokujo.[1] Travelling three or four hundred yards in every gust, it wrecked all the houses that lay in its path. Some were thrown flat on the ground; others were unroofed and left standing with only the bare posts remaining. The roofs of gates were blown off, fences were broken down, and landmarks swept away. Articles of furniture were whirled up into the sky, and the straw and bark which formed the roofing of houses were scattered through the air like the leaves of autumn. A blinding dust, thick as smoke, filled the air, and the noise of the elements drowned all human utterance, reminding one of the wind called *go*,[2] which, at the end of the world, will sweep every thing before it. Surely, thought I, this visitation comes to us as a warning from the Unseen. (Here follows an account of the removal of the capital to Settsu in 1180, of the famine year, 1181, followed by pestilence, and of the earthquake in the second year of Genreki 1185).

Such are the woes that meet us on earth, so fleeting is life, so unstable are the habitations of men. Still greater is the discomfort we undergo through the constraints of social bonds. Those who enjoy the favour of the great may for a short season be steeped in pleasure, but they cannot attain permanent happiness. Forcing back their tears, they fre-

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[1] Districts in Kyoto. [2] A Buddhist tradition.

quently counterfeit a careless smile, though always restless in demeanour. Like a sparrow close to an eagle's nest, they live in a state of continual fear. The poor, on the contrary, are the slaves of their wretched condition; they are forced to look upon the impotent envy of their wives and children; they must pocket the insults of their rich neighbours; they are denied even a moment's peace of mind. Such, again, as dwell near crowded thoroughfares are unable to escape the fury of conflgrations; but let them remove to the country and they will suffer the inconveniences of bad roads, not to speak of occasional visits from burglars. A strong man knows no contentment, a weak man is the object of scorn; to heap up wealth is merely to add so much to our cares; poverty and distress go hand in hand; dependence on others makes us their slaves; charity imposes fetters of affection on the mind. To act exactly as others do is intolerable; to pursue a wholly independent course seems to be madness. In what spot shall we find a resting-place, and what occupation will furnish distraction to our mind?

For long I lived on a property which I had inherited from my paternal grandmother. Having, however, lost my family, and passed through a series of misfortunes which left me weakened in body, I was at length compelled to leave my ancestral home, and at the age of thirty to take up my abode in the solitude of a hut, scarcely more than one-tenth the size of my former residence. It consisted of but one room, and was not a house in the ordinary acceptation of the term. A wall surrounded the enclosure in which it stood, but I could not afford a gate. The posts of the carriage shed were of simple bamboo. In a heavy gale or in a snow storm the hut ran great danger of being swept bodily away, or of being crushed under the superincumbent weight of snow. Moreover, as it stood close to the banks of a river, a flood might easily engulf it. Living in this uninviting abode for thirty years, I at length fell a prey to dejection. I had leisure to muse on the vicissitudes of human life and on the fickleness of

fortune. At length I formed the resolution of quitting the hut and the world together. I was bound by no family ties and could feel no yearning towards what I had left; being no pensioner, why should I long for my former position? And so I migrated to the hills, and spent many springs and summers on the cloudy heights of Mt. Ohara.

The dew of sixty years that was on the point of vanishing, crystallized afresh on a tiny leaf. My new habitation is small even when compared with its tiny predecessor, and might be likened to a night's shelter for a belated traveller, or to the cocoon which encloses an old silkworm. My life is slowly declining and my fortunes ebb with it. In structure the dwelling resembles no ordinary house. The single room measures ten feet by ten, and seven feet high. It occupies no permanent site, as I have felt little inclination to settle in any one place. The floor is of clay, the roof is is of thatch, the boards are fastened together with hooks for ease of transportation. Were I to change my home, what expense should I incur? Two carts are sufficient to carry the whole structure. Only the slight price of the hire of these, nothing more!

Secluded in the innermost recesses of Hino, I have added a few conveniences to my hut. On the southern side I have hung a temporary curtain, with a bamboo mat under it; on the western wall a shelf has become the sacred receptacle for the image of Buddha, where his brow may catch the brightness of the western sun. On each of the two door leaves I have hung a picture—one of Hugen, the other of Hudō. Above the lintel of the northern door I have fastened a shelf, on which are placed several black leather boxes containing literary papers, Japanese songs, *ōjō-yoshū*[1] and the like. Close by, leaning against the wall, are a *koto* and a *biwa*, to which I have given the names of *Origoto* and

[1] A Buddhistic manual, in two volumes, written in Japanese (not Sinico-Japanese).

Tsugi-biwa, respectively. On the eastern side is my bed, consisting of a mass of ferns on a straw mat. Beside it, and close by the window, stands my writing-desk and a brazier, and these, with a pillow, complete the furnishing. To the north of the hut lies my garden, a small patch enclosed by a broken hedge and containing a selection of medicinal plants. South of the house a pipe conducts water to a reservoir which I have constructed of stones. The near vicinity of the well-wooded Toyama, with its vine-clad slopes, provides me with sufficiency of fruit and of fuel. The valley, though dark with thick underwood, opens to the west, the home of the blessed, thereby offering much help to my meditations.[1] In spring I gaze on the purple clusters of the wistaria, which hang in wavy profusion all around. The mournful note of the cuckoo ushers in the summer, and puts me in mind of my latter end. With autumn comes the shrill chirrup of the cicadas, which I interpret as a dirge for life, empty as their cast-off shells. Snow has an attraction for me, because it seems to symbolize human sin, which increases in depth and then melts away. When indisposed I frequently fail to perform my devotions or to read the sacred books, and no one can call me to account for the omission. Nor have I any friend in whose presence I can feel ashamed when neglectful of my duties. The discipline of silence,[2] towards which I have no special inclination, I perforce observe, having no friend to tempt me to chatter. Being out of the reach of temptation, I run no risk of breaking the canons of Buddhism. When in the morning I happen to come to the river's margin, and watch the vessels plying up and down, I feel that my frame of mind and my position exactly resemble Manshami's.[3] Again, when the wind

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[1] The west is, to Buddhists, associated with *Gokuraku*, the land of beatitude, whither good men go after death. [2] Imposed upon Buddhist priests, as on the Trappist monks of Europe. [3] Manshami is a character in the *Manyoshu*.

rustles among the cinnamon leaves, I call to mind the scene in Junyo Bay, in the Junyoko off Hakurakuten, and begin playing on the *biwa* in imitation of Cinnamon Dainagon.[1] I have no special musical skill, but then there is no one to criticize my efforts; I sing to myself, and thrum for myself, merely as a mental relaxation.

At the mountain foot stands a small cottage, in which dwells the keeper of the mountain. His boy now and then pays me a visit and accompanies me on leisurely strolls. Though he is but sixteen and I am sixty, the difference in our ages makes no difference in the pleasures which we mutually share. We collect cranberries, gather *kaya* flowers, fill our baskets with mountain-potatoes, pick parsley, or weave mats from the fallen corn-stalks. When the weather is fine I ascend the mountain peaks to gaze from afar on my native district, and to revel in the beauty of the surrounding scenery. Of this delight I cannot be deprived, as nature is not the private property of any individual. And I often go on long excursions, over Sumiyama, and past Kasadori, visiting the shrine of Iwama, or making a pilgrimage to Ishiyama. Sometimes I go as far as the moor of Awazu, where are the ruins of old Seminaru's cottage, or linger by the grave of Sarumarudaū, beyond the Tagami river. On my way home I am frequently rewarded by finding a choice bough of cherry or maple, or a bunch of ferns, or a cluster of fruit, which I offer to Buddha or reserve for my own use. A "bright moon on a calm night recalls to me the men of old; the cries of monkeys affect me to tears;"[2]

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[1] A famous *biwa* player who flourished at the close of the XIth. century. [2] The poems of Tōhō, in the period of Fukyō, first refer to the chattering of monkeys as pitiful. The following is from O'Shōrei, a contemporary of Tōhō's, who flourished in the eighth century:—Among the fragrant orange plants we part at a river-side inn; the wind from the river blows hard and sends the rain athwart the ship. Far hence, before the moon of Mt. Sho, alas, will the shrill cry of apes prolong your grief even in your dreams.

the fire-flies in the herbage gleam like the torches of Magijima. A morning shower sounds exactly like wind rustling through the trees. When I listen to the notes of a wild bird, I speculate whether it is the male or female bird calling for its young.[1] The bold appearance of a solitary hart reminds me of the wide gap that exists between the world and me; the plaintive voice of the owl fills my mind with pity. Scenes like these are found everywhere around in inexhaustible abundance, possessing for those who are profounder in reflection and quicker in apprehension than myself still more varied attractions. Five years have elapsed since I first took up my abode in this place. The flimsy shed has now fallen into an almost dilapidated condition. Under the eaves there has accumulated a thick mass of mouldering leaves. A coating of moss covers parts of the floor. From time to time tidings have come to me from the city of the death of many noble persons there. And it is an easy matter for me to calculate the number of humbler folks who have also been overtaken by the same fate. Many houses, too, must have been consumed in the numerous conflagrations. Only this unpretending cot of mine remains safe and undisturbed. Narrow though it be, it provides a couch by night and a seat by day, and suffices to shelter me. The shell-fish is content with its contracted abode; the fish-hawk lives on a craggy and inhospitable shore that it may avoid mankind. Like them, I am fond of a single life, with no object of affection to cherish, no friendships to cultivate. My sole desire is to find tranquillity, to be free from care. Others, when they build a house, build it not for themselves;

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[1] A reference to the lines of Uki Moto:—"Whenever I hear a pheasant sing, *horo*, *horo*, I wonder whether it is my father or my mother." The title of the poem in which the lines occur is "All beings are our parents." Boshio (16th century) also expresses the same idea:—"I long to see my father. I long to see my mother, whenever I hear a pheasant sing." The pheasant was typical of parental affection.

their houses are for their families, or their instructors, or their lords, or even for their oxen, their horses and their treasure. But I have built mine for my own sole use, because I have no companion, and no friend to live with me. What is friendship but regard for the rich and open-handed, and contempt for the upright and kindly? Better to make friends with music and with nature! Our servants, caring only for rewards and punishments, estimate our regard for them by the amount of largesses we bestow on them. We throw away kindness on those who neither need nor appreciate it. Let us rather be our own servants, using our own limbs—a manner of life, which, if somewhat irksome for the moment, is much easier than to employ others. Let us make use of our bodies for two ends—our arms as our servants, our legs as our vehicles. The mind which acts in sympathy with the body, may use the latter when fresh, allow it to rest when tired. Let the mind be careful neither to overtax the body, nor, on the other hand, to encourage it in its disposition to be lazy. Exercise is health-giving; why then sit in idleness? To trouble others is a sin; why should we ask for assistance? With regard to my diet and clothing, I observe the same principles. A garment of *fuji* and a bed-quilt of hemp suffice to cover my body. My life may very well sustain itself on the *kaya* flowers which flourish in the wilds, and on the fruits that grow on the mountain side. My poor thinly-clad figure is no object of ridicule in these solitudes. Meals so scanty as I have described have still a relish for me. These remarks are not intended as a sermon addressed to the well-to-do, for I am merely comparing my previous life with the present. Since I renounced the world's pleasures, envy and fear have vanished from my mind. Free from regret and reluctance, I pursue my course as Providence directs me. Looking upon self as a floating cloud, I place no dependence on it, nor, on the contrary, am I in the least dissatisfied therewith. Fleeting pleasures

have dwindled into insignificance over the dreamer's pillow; his life-long desire finds its satisfaction in the contemplation of the beautiful in nature.

The three worlds[1] consist of only one mind. Treasures, horses, oxen, palaces, castles,—what boot they, so long as the mind is uneasy? In this lone place, in this small cottage, I enjoy full peace of mind. Were I in the city, I might feel shame in becoming a beggar; but settled here, I pity those who toil and moil in the dusty highway of the world. Let him who doubts the truth of my words merely look at the denizens of the sea and of the air. A fish never grows weary of water; but its motive none but a fish can tell. So birds are fond of the woods; ask them the reason why. The same may be said of seclusion; its pleasures cannot be understood by one who has not led the life.

The lunar course of my life is fast drawing to a close, and every moment I draw nearer to the peak of death. When the time shall come for me to make a sudden start for the darkness of the "three ways,"[2] of what use will it be to me to have troubled myself with earthly cares? Buddha enjoins us to love nothing earthly. To love my moss-clad hut, this of itself is a sin; even this cherished tranquillity is an obstruction to salvation. Woe to those who, to while away the time, indulge in idle pleasures.

One quiet morning after making these reflections I propounded to myself the following question: Granted that your object in forsaking the world and retiring to these woods and mountains is to tranquillize your mind and carry your principles into practice. But, though in appearance you are a sage, yet your mind is soaked with impurity. Though your hut resembles the dwelling of Jyomo,[3] yet your conduct

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[1] The three worlds of matter, spirit and passion. [2] The name of a river, which, like the Styx, has to be crossed by the dead. [3] The hero of Yuimagyō, a Buddhistic book.

falls short even of Shuri-Bandoku's.[1] Is this the result of poverty, or of inward impurity? This question I left unanswered, but twice or thrice repeated involuntary prayers.

Written in the hut at Toyama, on the last day of March in the second year of Kenreki (1212 A. D.) by Renin, the monk.

Alas; the moon, now hid behind yon peak,
Denies the constant light I seek!

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[1] A disciple of Shaka-Munyi, noted for his weak memory.

SPECIMENS OF AINU FOLK-LORE.

LEGENDS X, XI, XII.

By Rev. John Batchelor.

[*Read April 28th, 1892.*]

LEGEND X.*

Horokeu Kamui kot' tureshi akore katu oma yukara.

Akoro sapo iresu hine ramma kane oka an ruwe ne. Iresu ruwe ene oka-hi :—

Kane[1] umangai ni umangi uweoriro o. Kane umangi umangi kata ibe-op noka ibetam noka charuwatore.[2] Shiri kunne koro ibe-op noka-ibe-

The legend of How the younger sister of the wolf-god was given to me (*to wife.*)

I was brought up by my elder sister and always remained at home. I was reared in this wise :—

The[1] iron and wooden beams (*of our house*) were painted in diverse colours. Upon the iron beams were placed[2] pictures of swords

* Legends I—VII and VIII—IX will be found in vols. XVI., Pt. ii. and XVIII., Pt. I. of the Transactions of this Society.

1. The word here translated "iron" is, in the original, *kane;* by some Ainus also pronounced *kani.* It is doubtful whether *kane* would not be better rendered by the word "beautiful" than by "iron;" thus we should read,—"the beautiful wooden beams, &c., *(see Legend VI Vol. XVI., Part II. note on verses 1 and 2.)*

2. "Placed." *Charuwatore* really means "to be placed in order;" "to be set in rotation." Hence it is doubtful whether the "spears" and "swords" here spoken of were not real rather than mere pictures or paintings, and were carefully placed in order upon the beams as may sometimes be seen in some few Ainu huts to-day.

tam noka shiknu kamui ne;[3] arutam kochupu-chupu.[4] Notakop nipek, eembe nipek, shukus toikunne, chisei upshoro emakunatara okai an.

and spears. By night these pictures of swords and spears became living gods[3] and flashed about blindingly.[4] The brightness of these tools and sharp instruments lit up the inside of the house during the darkness.

Hike, rapoketa; Kunashiri uirup, Shumashiri[5] uirup, makangane remetok koro gusu, tumi patek irangetupa ne ki yak aye. Arushka gusu aemokoro koshikiruru an an ruwe ne. Shine an ta akoro sapo tu numon ibe[6] anuruoka eterekere.

Whilst things were in this state it was said that, the inhabitants of Kunashiri and Shumashiri[5] were beyond measure brave, and pursued war as a profession. I was so angry at this that I was unable to sleep.

Okake an koro, hotke kosonde[7] akoro sapo ikaseshke; pirika mokoro annoyekoru aeramu an koro, hopuni an ine, aramkopashtep ashito-

On a certain occasion my elder sister cooked two days'[6] food.

After this she covered me up with the bed clothes[7]

3. "Became living gods." Probably some secret drill was carried on by night with a view to future war.

4. "Flashed about blindingly." *Arutam* is said by the Ainus to mean a "flash" like a "flash" of lightning. *Kochupuchupu* means "to blink the eyes at." The flashes were here caused by the spears and swords knocking together when at drill.

5. *Kunashiri* and *Shumashiri* are Islands to the Northeast of Ezo.

6. "Two days' food." A poetical way of saying "much food," or "a large quantity of food."

7. "Bed clothes;" Ainu *hotke kosonde*. *Kosonde* appears to be the Japanese word *kosode*, a wadded silk garment, and *hothe* is "to lie down to sleep;" hence *hotke kosonde*, "sleeping clothes" or "bed clothes." None but a "well to do" Ainu could have a *kosonde*, and most likely the word is here used to show that our hero was a chief of the people. The Ainus, however, maintain that *kosonde* is a real Ainu word whatever *kosode* may be.

mush. Orowa no, Kunashiri kotan Shumashiri kotan kopakehe aituyere. Arapa an, aine, pirika pon pet sanru konna maknatara. Pet putu ta arapa an, aige, pon urat' tapkop[8] koi yange ni kurukashike oosor' ushi.

and, when I judged her to be fast asleep, I arose and girded on my sword.

I then set out for Kunashiri and Shumashiri.

As I went along a pretty little water-way opened up (*before me*). So I came to the river's mouth, and, a little mountain[8] like fog was (*I saw*) sitting upon a log of wood which had been cast up by the waves of the sea.

Samata arapa an. Ingan ruwe ene oka-hi:—Shiwentep ainu retara kosonde utomchiure. Pon shiwentep shongo iporo eipottumma; shinnai kane itak an hawe ene oka-hi:—"Ingara gusu itak tunash guru itak okake akotuye; itak moire guru itak etoko kotuye rametok a ne ruwe ne. Tunashi itak an."

I went up to it; and this is what I saw:—An Ainu woman dressed in white clothing. The little woman looked as though she had come with a message; nevertheless I spake thus to her:—"Look here, I am a person so brave that I cut down fast speakers ere they have finished talking, and slow talkers at the beginning of their speech. (*So*) speak quickly."

Itak an rokbe pon shiwentep hottoro kata kotususatki;[9]

As I spake the little woman trembled exceedingly;[9] and,

8. "Mountain like fog." *Urat* or *urara* is "fog," and *tapkop* is a single, solitary mountain or hill; or a mountain standing quite alone. The "fog" which looked like a "little mountain" turned out to be an Ainu woman, as will be seen hereafter.

9. "Trembled exceedingly." The Ainu words are *kottoro kata kotususatki*, lit: "she trembled upon her fore-head." This is a phrase used to express great fear; her forehead shook through fear.

tusa imaka uiyerishpa iki rok ine, itak hawe ene oka-hi:—"Tapan pon pet pet etokota horokeu Kamui yai-iriwak[10] koro an ruwe ne. Kot'tureshi a ne hine uitek hawe ene ani:—Rametok koro wa Ainu ne yakka Kamui ne yakka komonnukurip. Shumashiri uirup Kunashiri uirup ne ruwe tapan. Shinen e ne wa e arapa yakka wen ruwe ne na. Akot'tureshi shirika sak[11] yakka okken kashi apirikare wa aekore kusu ne na. Tande wano hoshipi ikore yan; sekoro okaibe, akoro yupi ye utekkara ariki an na," sekoro itak. Arushka gusu yupke tamkuru akoterekere. Hopumba tomun tup ne rep ne ausatuye. Inotu oroge hopumba humi keurototke ki rok; awai iteksam peka ainu kurumam chishipusure; aye rok kuni, horokeu kamui aarakotomka koro wen buri enan kurukashi chiparasere. Kurukashike

chewing the sleeve of her dress (*as in fear*) spake as follows:—"At the source of this little river I have a blood-relation[10]—the Wolf-god. I am his younger sister and have been sent to say this:—The inhabitants of Kunashiri and Shumashiri are men so brave that neither gods nor men dare approach them, (*so that*) if even you go there, and alone, it will be bad (*for you*). My younger sister is a poor worthless creature,[11] but I will make up for that by giving you some presents with her. So now return from here; it was to say these things (*to you*) that my elder brother sent me here." So spake she. I was angry at this and therefore struck her fiercely with my sword. I killed her whilst she was rising. Her soul departed with a great sound; but Lo, the shadow of a man appeared at my side; it was,

10. "Blood relation." *Iriwak* are one's own blood-relations, while distant relations are called *iritak*.

11. "Poor, worthless creature." *Shirikasak* means, "destitute;" "poor;" "worthless;" "ugly." The Wolf-god meant to say that his sister was utterly unworthy of the hand of our hero. However, he would make up for that by giving a large dowry or marriage portion with her. It was customary among to Ainus to give some dowry with a bride when she got married.

itak omare ene oka-hi:—"Usaine katap, ainu akpo irushka shiri aoyane ne na. Nep wen itak akot'tureshi aeutek-kara e tunashi raige ki shiri tap an? E ki rusui-be rai ne yak ne chitunash raige itasa pakno aekarakara ki gusu ne na."

without doubt, the aforesaid Wolf-god. He had anger depicted upon his countenance. Now this is what he said:—"It is ridiculous of you, my young Ainu brother, to get angry in this way. What was there improper in the speech I sent my younger sister to deliver to you that made you slay her so suddenly? If it is death that you are seeking, I will slay you as quickly as you slew her."

Sekoro itak koro, yupke tamkuru ikoterekere, anrai poka ayaikouiukesh, peken'-rera ne[12] tamtui kashi ama-unoyere. Itasa pakno yupke tamkuru akoterekere. Ho-pumba tomun, tup ne rep ne ausatuye. Inotu oroge ho-pumba humi keurototke; ashi-ri pito[13] ne, nei a pon pet pet etoko kohum henene; ka-shokake chakkosanu. Orowa ao ashiriikinne Kunashiri ko-tan akourepuni yupu arapa

When he had so spoken he set upon me with his sword, but as I had no wish to be killed outright I turned myself into wind[12] and jumped above his sword-sweep. I (*then*) attacked him as he had done me. I cut him down as he was rising[13] up. His soul departed with a great sound, he became a new man and went round the mountains towards the source of the little river.

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12. *Peken' rera ne* is "became bright wind." Though the Ainus say that their ancesters had power themselves invisible by turning into air, yet all our hero intends to say here is that he made haste to escape the sword sweep aimed at him.

13. "Became a new man." *Pito* is often used in Ainu legends and seems to be from the Japanese word *hito*, "man." The Wolf god's spirit having been released from the body was renewed, and went off beyond the mountains. The victory belonged to the Ainu.

an, aine, Kunashiri kotan Shumashiri kotan akoshirepa.

After this there was peace. When this was over, I walked fast till I arrived at Kunashiri and Shumashiri.

Pakno ne koro, orowa no, Kunashiri kotan kotan pakehe kotan kesehe wen tumiram akohetukure. Orowa no, kunne hene tokap hene rorumbe patek tumi patek aki rokine, shine okkaiyo a nep ne gusu, tane anak ne ami kosonde heru penram atekokbare. Nei rapoketa tuima kotan kotan tapka ta tap an kamui mau[14] tap an kamui kuru chihetukbare, seenne moyo no kurukashike pase kamui humrarire. Ariki ine, akot tumunchi koshirepa. Ingar'an ruwe, a un chisei ta kane umangi ni umangi kata aruchoroshte ibeop naka ibetam noka shikun kamui ne kamui mau etok uweshinoiba. Ariki ine, orowa no tumi koro katu nep araige shomoki no po Shumashiri uirup kunashiri uirup kotumi koro. Eattereke ne Shumashiri kotan Kunashiri kotan wentoikanto akokirukara. Pakno ne koro, senram sekoro ibeop noka

After this, having arrived at Kunashiri I stirred up a grievous war from one end of the land to the other. And, as I was carrying on this war single-handed, both day and night, I found that my clothes (*were torn so much that*) nothing but the front of my garment hung from my arms. By and by there arose over the distant mountain tops, such a mighty wind[14] and shadow, and above all, there was the sound of the approach of a great company of the gods. Yea, they came to the place where I was fighting. On seeing the gods fly before the great wind (*I recognised them as being*) the spears and swords which were placed upon the iron beams of our house; they had become living gods. When they came, the war with the people of Kunashiri and Shumashiri was as nothing, for in a moment their country

14. "A mighty wind." *Kamui mau*, lit: a wind of god.

ibetam noka kamui mau etok uwehopumba paye wa isam.

Orowa no, akoro kotan kopakeheta aituyere. Ek an awa, tap an kamui mau kurukashike pase kamui seenne moyo humrarire. Iónkashike chikarure; kurukashike kamui itak han horaochiwe ene oka-hi:—"Ingara gusu, tan heikachi, itak an chiki, onnere an. Ashinuma anak tap Poiyaumbe[15] a ne ruwe ne. Tumunchi patek rorumbe patek aki rok ine, akoro kotan Shinutapka ikeshui hine ariki an, awa, shuma uturu un heikachi chish han charototke. Tambe gusu, ingar'an awa, pon heikachi chish koro oka; oro oyachiki, Okikurumi[16] ainu moshiri

was completely laid waste. When this was over, the spears and swords rose up in the air and departed in the same manner as they had come, before a mighty wind.

And so I returned home. When going along there appeared a great host of gods riding upon a mighty wind. Hovering over me a voice from a god came forth, which said: "Look here, my lad, I have something to say, so pay attention. As for me, I am that Poiyaumbe.[15] I left my home at Shinutapka in wrath because there was nothing but war in the land. And, as I was coming along I heard the voice of a lad crying among the stones; I went therefore to see what it was and found it to be a little lad weeping. Now, Okikurumi[16] was the governor of

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15. *Poiyaumbe*, "Brave Ainu." The speaker here makes known to one hero that he is a well known person—in fact—a brave man whose fame has spread far and wide. No further introduction was needed than "that Poiyaumbe." [See Trans: Vol. XVI. Pt. ii, Page 147 Note 1].

16. Okikurumi is the Ainu name for *Kurōhangwan Minamoto no Yoshitsune*, who was driven to Yezo by his younger brother in the 12th century of our era, and who is said by the Ainus to have taught their ancestors the arts of fishing and hunting.

moshiri noshike epungine guru, nitne kamui shine-ikinne kotumi koro, Shukup ebitta[17] ki rok ine Nitne kamui innep ne gusu annu-tuiba. Okikurumi koro machi hoku kemnu, tambe gusu, pakkai ine hoku okata tumi koro aine annu-tuiba. Pon heikachi e ne, ine, shuma ututta eara kosonde e kokarakari e anu a an. Ki rui mashkin aekemnu gusu akot'-chisei aeoresu, e poro pakno akoro sapo e resu ruwe ne wa ne yakun, e poro koro Horokeu kamui kot'tureshi ek orowa ne yak, tap an moshiri noshike e epungine ki gusu ne ap. Moto isam no Kunashiri kotan Shumashiri kotan e kotumi koro; nei kashita, Horokeu kamui nep wen keutum kon rok gusu tureshi tura no e tunash raige? Irushka an gusu e resu sapo teke apashte; tane anak ne ki shiri na na. Hene ki yakka, shukup eturupak shu-

the middle of Ainu-land; and (*once upon a time*) the devils made war against him with one accord and slew every one of his[17] men, for the devils were numerous. The wife of Okikurumi took her child upon her back and came to avenge the death of her husband, but she was slain. You were that little child which she took and wrapped up in a garment and put among the stones. As we much desired to avenge you we brought you up in our home; and after our elder sister had reared you and the younger sister of the Wolf-god had come to you, it was settled that you were to govern the middle of Ainu-land. And now without cause you have warred against Kunashiri and Shumashiri, but above all, what evil had the wolf-god and his sister done that you should have so quickly killed

17. We learn from this legend that Yoshitsune was slain while fighting. Who the "devils" were that slew him is not stated, but I have been told privately that he was killed in Karafto by the Karafto Ainus in one of their feuds with the inhabitants of Yezo. Yoshitsune, it is here stated, left one son. He also, we are told, was afterwards killed in battle.

kup ekashu apa[18] ne koro utan'ne koro e koro ki kunip tap ne ibetam noka ibeop noka ne ruwe ne na," sekoro kamui itak hau horaochiwe.

them? I am angry with you for this and therefore your sister has been led away into captivity, yea, she is even now being taken away. However, these swords and spears, some of which are of your age and some of which are your elders, are your friends and relations."[18] So spake the voice which came down from the gods.

'Ashirikinne irushka keutum ayaikoropare; sapo ohai araikotenge, tamparaparak aesan animba. Chish an aine "neita pakno e chish ike e koro sapo e nukar'heki yainu an gusu" ayainanka piriba-piriba. Orowa no akoro kotan ta ek an; awa, son no ka un, akoro sapo tarape muni eotuyetuye oara isam. Orowa, shinen a ne wa an an, aige, shineanda chisei soita ainu ariki, ioyamokte aki, awa, aronnu rokbe Horokeu kamui kot' turesh poro chitarabe[19] sei hine ariki. Orowa no, iparo shuke ramma kane okai an. Nei rapoketa ibe-op noka ibe-

Then again I was angry, and, weeping very bitterly, called after my sister. While weeping I thought to myself —"however much you weep it will not bring your sister to you"—so I wiped my face. On arriving at my home I found that my sister and all her furniture and ornaments had, in truth, entirely disappeared. After this I lived alone. Now, one day, I was much surprised to hear people outside. It was the Wolf-god and his sister whom I had killed that were coming; they were bringing a very large bundle[19] with

18. "Relations." It is here clearly stated that the spears and swords which have hitherto been spoken of as having been painted on the beams of the hut, were, in reality, living men, or warriors.

19. "Large bundle." The marriage portion spoken of above.

tam noka shirikuune koro shiknu kamui ne; arutam kochupuchupu. Tambe patek ayaineusara ka okai an, aine, Horokeu kamui kot'-turesh akor'ine okai an ruwe ne.

them. After this they stayed as servants; then the pictures of spears and swords came to life at night and did nothing but exercise and talk together of old times. I then married the younger sister of the Wolf-god and we live together.

LEGEND XI.

WHY THERE ARE SNAKES IN AINU-LAND,

AND

WHY THEY SWALLOW FROGS.

Fushkotoita ene an orushpe an-i :—

Nei okokko, "tam-moshitta okai an ko aep ka isam; gusu, rep un guru moshiri orun oman kusu ne," ani itak.

Awa, nei terekeibe ene itak-hi :—

"Shomo oman yakka pirika", ani itak: gusu, "nep gusu nei hawe ne ya?" ani itak. Awa, "tam-moshitta e an wa e ep isam chiki, kuani oat-chikirihi ruki kane an ko anak ne kironnu; gusu, shomo oman yakka pirika", ani terekeibe itak. Gu-

The following is a tale of ancient times :—

The snake said, "I cannot stay in this country for there is no food; I will, therefore, migrate to a foreign land."

Thereupon the frog replied :—

"There is no necessity for you to go away." Upon this the snake asked, "Why do you say so?" The frog answered: "If in staying in this country you find you cannot obtain sufficient food, you will, if you swallow one of my legs, be fully satisfied;

su, shomo oman no tammoshitta okai ruwe ne; wa gusu, nei terekeibe nukara chiki, ruki patek ki rusui koro okai ruwe ne.

there is therefore no necessity for you to go away." And so the snake did not migrate but stayed in the land; and now, whenever it sees a frog it always has a great desire to swallow it."

LEGEND XII.

WHY WESTERN YEZO IS SO ROUGH AND DANGEROUS.

"Kotan kara kamui kotan kara katu tap ne an ruwe ne yak aye.

Turesh tura no kara wa, nei turesh anak no Anruru moshiri kara; orowa, okkai kamui anak ne Chupka moshiri kara wa, uwetushmak wa kara yak aye. Awa, nei turesh shiwentep ne gusu, oina kamui kot turesh an, aige, tura no monraige shomoki no nei turesh tura uweneusara. Rapoketa, okkai kamui kotan kara okere ehange; ne wa ambe nukara wa orowa no kimatek gusu, nei Anruru moshiri nei no

"This is the way in which the maker of places is said to have created the world.[1]

He and his younger sister made it between them; the sister's portion was the Western part of Yezo while the male deity made the Eastern part, and, it is said, they vied with each other in their work. Now, as the younger sister was but a woman, she, happening to fall in with the younger sister of the Divine Oina, instead of doing her work stopped to chatter. While this was going on the male deity came near com-

1. The world here means the Island of Yezo only.

kara; yakne tunashi no kara kuni esanniyo gusu, wen no wen no kara katuhu ne wa gusu, tan Anruru moshiri ayaikikip ushike patek poron no an ruwe ne, ari ambe upashuma an."

pleting his portion of the task; seeing this, she, being surprised, made the Western part after the slovenly manner it now is. It was therefore because she did her work in too great a hurry that it was done so exceedingly badly; and hence it is that the Western part of Yezo has so many dangerous places about it. So runs the tale."

FEUDAL LAND TENURE IN TOSA.

By the Rev. R. B. Grinnan.

[*Read 28th April, 1892.*]

The history of the land tenure of a country is always closely connected with its political development. This is especially true of ancient times, for then land was the sole or principal source of wealth and power, and came naturally into the hands of the strongest and therefore the ruling class. It is necessary, in order to fully understand the question before us, to inquire who the early rulers of Tosa were, and by what means their authority was maintained. But here as elsewhere early history is obscure, and even with the help of old land-marks it is difficult to obtain more than mere suggestions respecting either the political relations of the time or the early systems of land holding.

Before the time of Chōsokabe Motochika there does not appear to have been any one lord ruling the whole island of Shikoku as under the *daimyō* of the Tokugawa regime. There were *kokushi* (governors) who were appointed by the Emperors, but their authority over the under lords was never great. Their rule was rather nominal than real. When it was that these *kokushi* were first sent to Tosa I do not know. My information on this

subject has been obtained chiefly from a book called "The Rise and Fall of Chōsokabe" (Chōsokabe no Seisuiki) and this history does not antedate the entrance of that family into Tosa. Before speaking at length of this Chōsokabe family I wish to call attention to the family of Ichijō, from which sprang the longest and most important line of *kokushi* known in Tosa. The Ichijō were of *kuge* origin. At the time of the "Ōjin no ran," (Rebellion of Ōjin) a *kuge* named Ichijō Kazubusa fled from Kyoto and hid himself in Hyogo. Chōsokabe Fumikane of Tosa, hearing of his whereabouts, went to see him and persuaded him to return in his company to Tosa. His reason for performing this act of kindness was that Kazubusa's father had once taught him certain necessary laws of court etiquette while he was visiting in Kyoto. It seems, further, that Fumikane sought to strengthen himself by means of the friendship of a man of high *kuge* rank. The contending lords of Tosa had been in the habit of securing *monbatsu* or men of good family, when opportunity offered, with a view to strengthening their positions socially and politically. After his arrival in Tosa, Kazubusa lived for two years in the castle of Ōko, to which place came the various under lords to pay him their respects. He was afterwards appointed *kokushi* of Tosa, and it was arranged that he should live in the castle of Nakamura, situated in what is now known as Hatagōri. From this time on for several generations the Ichijō family lived in the castle of Nakamura and were the *kokushi* of Tosa. No great interest attaches to any of them, except it be to Yasumasa, who became a Christian, as his name also seems to imply. It was for this reason that he was banished to Usaki in Bungo, where he remained, marrying the daughter of a Christian *daimyō*. Ichijō Tomomasa was the last of this family to become *kokushi*. He was banished by Chōsokabe Motochika to Iyo, where he died. These *kokushi* were the first to classify the lands so that the proper amount of tax could be collected for the Government

in Kyoto. They greatly promoted the progress of the country by assisting and directing in the opening up of new lands for cultivation and in the building of proper river embankments.

SHUGOKOKUSHI.

Under the *kokushi* were the *shugokokushi* who were the real native lords of Tosa. They were small *daimyō* who had in various ways risen to power, and they were constantly contending among themselves for supremacy. They paid homage to the *kokushi* and tribute to the Emperor, and after that they were unmolested in their wars one with another. There were seven of these under lords, whose names and places of residence are as follows:—

JOSHU.

Aki,	who lived	in	Akigori	in	Aki no shiro (castle).
Tsumo,	"	"	Takaokagori	in	Hayama no shiro.
Ōhisa,	"	"	"	"	Hasuike " "
Chōsokabe,	who lived	in	Nagaokagori	in	Ōkō no shiro.
Kira,	"	"	" Agawagori	"	Kiragamine.
Yamada,	"	"	" Kagamigori	"	Yamada.
Motoyama	"	"			Asakura.

From what date these *shugokokushi* existed as such I do not know, but they were probably the seven leading under lords from the beginning of the rule of the Ichijō family. They helped materially in opening up the country for cultivation, and in laying out the *honden* (chief lands) as these were afterwards found by Yamaguchi when he went to Tosa. Of the seven the family which rose to greatest power and influence was that of Chōsokabe. It was of Chinese origin and of very high rank. It is said that Kōman Ō, of China, came to Japan in 199 A.D., but for what purpose is not known. He was a great-great-grandson of Shikotei, who built

the great wall of China. Shintoku Ō, the son of Kōman Ō, came to Japan in A. D. 288 and received from the Emperor the name of Hada. He became a resident, it is said, of the province of Yamato. In the 84th generation (*dai*) from Shintoku Ō appeared one named Hada Yoshitoshi, who was sent as a *kokushi* to Tosa. The office was not continued to his descendants. Nevertheless they remained in Tosa where they became *shugokokushi*, and the possessors of much landed and other property. They lived for long in Sogabe *mura*, near the present town of Asaoka, and there the family came to be called by the name of Chōsokabe. By far the most famous and powerful of them all was Chōsokabe Motochika. He was of the 21st generation (*dai*) from Yoshitoshi, the first of the family to go to Tosa. He succeeded in driving out the Ichijō family from Hatagori, and in subduing to himself all of the *shugokokushi* in Tosa, and finally in obtaining control of the whole island of Shikoku. Hideyoshi, (1586-1598) fearing the growing influence of this man, restricted him by force to the single province of Tosa. At first Chōsokabe Motochika lived at Ōkō Castle, which was built on a hill a few miles to the north-east of the city of Kochi. He afterwards lived in the castle of Urado, which stands at the entrance of the Kochi Harbor. He was both a great general and a wise ruler. He established many laws of importance, and opened up a great deal of the country which, until his time, had been left uncultivated. His son Chōsokabe Morichika became the lord of Tosa, but for siding against Iyeyasu in the battle of Sekigahara (1600 A. D.) he was deposed and his daimiate given to a man named Yamanouchi Katsutaro.

SHIKE.

Under the *kokushi* and subject to them there were also *shike*, Yotsu no iri, who were lesser lords than the *shugo-*

kokushi. Four families of these were prominent in early Tosan history, viz. :—

Mori,	which lived	in	Ushinoe no shiro.
Kunisawa,	"	"	" Odakasaka no higashi.
Chiya,	"	"	" Kagamigori Takama no shiro.
Kaido,	"	"	" Kaida Sawa no shiro.

KOKUSHI (KUNI NO SAMURAI.)

There were also forty-five *kokushi* who were a kind of *samurai* under the *kokushi* (governors). They lived in very small castles and were owners of the surrounding lands.[1]

THE YAMAUCHI RÉGIME.

As stated above, Ieyasu gave the daimiate of Tosa to Yamanouchi Katsutoyo, who with his descendants ruled the province down to the time of the Restoration. Yamanouchi was accompanied to Tosa by his former *samurai*, but as these were insufficient in number, he hired other *samurai* from various quarters to go with him. His native place had been Kakegawa in Enshiu (Totomi), where he was only a small *daimyō*. Previous to the battle of Sekigahara this Yamanouchi had loaned his castle to Iyeyasu, and had otherwise rendered him valuable assistance, and his promotion was a natural consequence. The daimiate of Tosa was rated at about 240,000 *koku* of rice. To say, however, that Tosa was a 240,000 *koku* daimiate does not mean necessarily that land producing this quantity of rice was actually enjoyed by the *daimyō* himself. The account seems

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[1] The history thus far is gathered from the above-mentioned book. For collecting and verifying the statements made in the remainder of this article I am indebted to Mr. Shibata Kanichiro, a former *karo*, and Mr. Hosokawa Gisho, a former *gōshi*.

to have included what was alloted to the *karō* (see below), who only gave to the upper lord a military contingent in time of war. When Yamanouchi Katsutoyo took possession of Tosa, he employed a man named Nonaka, a civil engineer, very skilful for that day, who went with him as his best *kerai* (vassal). This man did a great deal of important work on the water courses, i.e., in the building of river embankments and in digging canals for the proper irrigation of rice fields. He dug what is still called the Shinkawa (New River), which has been of immense benefit to the section of country through which it passes. It is said that Nonaka, in order to get the proper gradient for the canal, arranged a line of lanterns along the proposed course and was thereby enabled to obtain a satisfactory survey.

Let us now consider the feudal system under the Yamanouchi regime. Nearest to the *daimyō* came a sort of cabinet, consisting of three *bugyo* (superintendents), while the body of the retainers was made up of *karō*, *shikaku* (samurai), *gōshi* (country warriors), and *keikaku* (country gentry). I will describe these in the order named.

KARŌ.

When Yamanouchi Katsutoyo was sent to Tosa, the Shogun sent also *karō* of rank to act as checks upon him. They possessed a rather extended power under the *daimyō*. They owned lands, and had their own *samurai* and their own farmers also, who paid taxes to the *karō* only, not to the *daimyō*. There were eleven *karō* in all; eight of whom lived in the *jōka* or castle-town (Kochi), and owned land in various places throughout the country; the remaining three living in the country; namely, in Nakamura, in Sakawa, and in Aki, where they had castles of their own. These were practically under-lords, the *karō* of Sakawa being the most powerful. His income was rated at 10,000 *koku* of rice, and made him the subject of jealous

concern to the *daimyō*. The other *karō* had incomes varying from 10,000 to 2,000 *koku*. None received less than the latter amount. The *karō* did not render service to the *damiyō* by means of a tax paid in rice, but by providing him with a military contingent when called upon to do so.

SHIKAKU.[2]

The *shikaku*, or *samurai* owing allegiance directly to the *daimyō*, were of different ranks and all lived in the *jōka*. The upper class wore the two swords and might ride on horses, in time of peace and of war. It was necessary for them to own a certain number of horses in accordance with their rank. They were paid not in rice but by receiving a certain amount of *honden* or *shinden* (see below), which was allotted to each man according to the number of *koku* of rice to which his rank entitled him. The lower classes of *samurai* were paid in rice, not in lands ; they wore their two swords, but were

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[2] Classes of *samurai*. I will give first the ranks according to the payment that was received. The *samurai* who received lands and not rice from the *daimyo's kura* were called *jikata tori*, and the lands were called *chigyō* ; for example : it was said that a man was paid with so much *chigyō*, that is so much *honden* or *shinden*. Those *samurai* who were paid according to *kokusu* from the *kura* of the *daimyō* were called *kura chi tori*. There were also *samurai* who received *fuchi kippu*, which was the rice given from the *kura* of the *daimyō*, but not according to the *kokusu* (number of *koku*). *Ichinin-fuchi* was an allowance of 5 *go* of rice for one person for one day, and *samurai* were rated to receive so many *fuchi* ; for example a man would receive *gonin fuchi*, which would be 25 *go* of rice per day. Those who received the *fuchi kippu* generally also received an addition according to the *kokusu*.

Next below the *daimyō* of course were the *karō* ; below them came the first class of the *samurai* proper, who were called *churō*. The *churō* were all paid in first class *chigyō*.

The next rank was called *uma mawari*, some of whom received *chugyō* and were allowed to ride on horses. In this class were men who were paid with rice from the *daimyō's kura*, but were not allowed

not permitted to ride on horses in time either of peace or of war. *Honden* and *shinden* were lands which a *samurai* or in fact any one could own in his own name, but of these I will speak further on.

GŌSHI.

When Yamanouchi Katsutaro was sent to Tosa, about one hundred of the *kerai* of Chōsokabe Motochika submitted gracefully to the new government and became *gōshi* (country warriors), a class that is unique in the annals of Japanese feudalism. They were left in undisputed possession of the lands they had received from Chōsokabe. Their number was strictly limited, at first to one hundred, as stated above, but after a time new *gōshi* were created and the number was increased to eight hundred, where it

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to ride on horses. These latter were not paid in full accordance with their rank. They carried the name of this rank without having the highest privileges of the rank.

The next rank was called *koshōgumi*. Those in this rank were nearly all *kura chitori*.

The lowest rank was called *rusuigumi*. The men in this rank were divided, some were *jikatatori*, and some were paid in rice. Those who were paid in *chigyō* were men who had been *gōshi* for 30 years and had been raised to the class of *samurai*. After a man had been a *gōshi* for 30 years he became a *samurai* and in such cases his *ryochi* became *yaguchi*.

All the classes of *samurai* below the *uma mawari* were called *keishi*.

The difference between the lower class *samurai*, who receive *fuchi kippu* and the *keikaku* who were also paid in rice, was in rank. The *keikaku* (who did *not* do farm work), had always to give way to the *samurai*. All *samurai* on the first day of each month went and paid their respects to the *daimyō* but the *keikaku* were not permitted into the presence of the *daimyō*. They were allowed to pay their respects from a distance only on the first day of the year.

The *kerai* of the *karō* were nearly all *jikatatori*.

remained. Among the *gōshi* the right of primogeniture obtained, the eldest son inheriting the lands and name of his father, while the remaining children fell to the *heimin* (commoners) class and for the most part became farmers. If a *gōshi* wished to sell his name, position, and lands he could do so with the permission of the *daimyō*, and in this case the buyer, even though he were but a farmer, obtained all the privileges connected with the estate he received. A *gōshi* might, if he wished sell part of his landed property and still retain his rank; but if he sold all, he was *ipso facto* reduced to the status of a *heimin*. The position of the *gōshi* was midway between that of the *samurai* and the *keikaku* (see below). They owned lands, wore two swords, owned and rode horses, and went to war when called out by the *daimyō*. Their followers were only common farmers possessing no rank whatever. The *gōshi* became for the most part men of wealth, and they still retain their lands, which escaped the general confiscation at the time of the Restoration. The reason for this exception in their favor was that these lands had not been received from the Tokugawa Government, but had been held over from the olden time—the time of the Chōsokabe. The *gōshi* have long wielded a commanding influence in Tosa.

KEIKAKU.

Besides the *gōshi* and the *samurai* there were *keikaku*, a class of country gentry, who ranked below the *samurai* and *gōshi*, but above the common farming class. They did not live in the *jōka* with the *samurai*, but on the outskirts of the city and in country towns that lay within a day's call of the *jōka*. They were paid by an allowance of rice, and were permitted to wear the two swords but not to ride on horses.

FARMERS.

The farmers lived upon and tilled all the land of the province and paid a rent directly to the *daimyō*, *karō*, or *samurai* according as the land was of one or other of certain classes to be noted presently. The renters of *honden* drew lots every four years for plots of land under general cultivation; but from such quadrennial change house lands were excepted. The right to the *kujibun* (lot share) or plot of *honden* land thus subject to exchange could be bought and sold at will. This exchange by lot took place on all *honden*, whether it was held immediately of the *daimyō* or of some *samurai* to whom it had been allotted. Whatever changes took place in ownership of this land, the tenant held his *kujibun* and remained as before. One *kujibun* was on an average about eight *tan* (1 *tan*=about $\frac{1}{4}$ acre), in extent but varied somewhat. Farmers were not evicted except for very good reasons, such as incapacity as cultivators or the non-payment of rent. A *samurai* was permitted to make changes among his lease-holders after giving fair notice of his intention, and tenants could also sell out their rights to others by properly notifying the land owners. It should be added that farmers did not fight in time of war, but only carried burdens and performed manual labor.

DIVISIONS OF THE LAND.[6]

We next consider the different classes of land. First was the *honden*, (chief, original-land) the most valuable land in the province. The earliest cultivators of the soil

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[6] The *kasakunin* were only those who rented lands owned by the farmers. There were no *kasakunin* on the *daimyō's* lands. Each *shoya* of the *mura* arranged for the rental of the lands to farmers who worked the lands themselves and did not sub-rent them.

Lands owned by the farmers personally were divided into the *uwatsuchi* and *sokotsuchi*. The *sokotsuchi* was the earth below the upper

naturally first cleared up the fertile low-lands and these were marked off by the *kokushi* before the time of Chōsokabe Motochika, in order, as has been said, that the proper amount of tax could be collected for the central Government. By opening up new country to cultivation they added to these lands, as did also Chōsokabe Motochika when he became a *daimyō*. When Yamanouchi Katsutoyo went to Tosa, these *honden* were rated as producing 240,000 *koku* of rice, the amount at which the *daimiate* was accordingly scheduled. These *honden* could not be bought and sold, but parts of them were assigned to the higher class *samurai*, from which they received their annual supply of rice. Some portions also must have been held by the *karō*, but the bulk of them supplied the rice that went directly into the storehouse of the *daimyō*. The *shinden* (new-land) were lands cleared up after Yamanouchi Katsutoyo received the *daimiate*. They were not as valuable as the *honden* but were easily the next best lands. They could not be bought and sold, but, like the *honden*, had been partly allotted to the higher class *samurai*, not as property, but simply as lands from which their portions of rice should come.

The *yaguchi* were lands that had been opened up by the *samurai* themselves, and therefore belonged to them. The *samurai*, who themselves were not allowed to work, had *kumigashira* (headmen) to look after the tenants and

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strata of 3 ft. The *uwatsuchi* was the upper strata of 3 feet of earth, which was supposed to have been enriched by manuring during cultivation. The farmer who really was the original owner of the land often owned only the *sokotsuchi*, the *uwatsuchi* being owned by the *kasakunin* who had cultivated the land. This *uwatsuchi* was bought and sold without any change in the *sokotsuchi mochi*. After a *kasakunin* had cultivated the land for about 20 years he could not be evicted from the land but the *uwatsuchi* became his own. At the time of the Restoration all *kasakunin* who had cultivated the land for 20 years became *uwatsuchi mochi*.

their farming interests generally. These lands were transferable but were not as valuable as either *honden* or *shinden*, because they were for the most part in mountainous regions. For example, a *samurai* would buy a mountain from the Government and clear it up for cultivation, and this would then become his *yaguchi*. In some cases these lands seem to have been given to the *samurai* by the *daimyo*. *Ryochi* were the new lands cleared up and owned by the *gōshi*. They also, like the *yaguchi*, were mountainous. If a *gōshi* became a *samurai*, he gave up his *ryochi* and received it back as *yaguchi* or if *ryochi* was sold to a *samurai* it became *yaguchi*, and vice versa. The *gōshi* worked these lands themselves, and bought and sold them at pleasure There were also certain lands, which ordinary farmers would buy and hold in their own names, and they constituted a sort of *shinden*, though not the true *shinden*, which could in no case be bought or sold. The farmers' *shinden* was generally mountainous land, opened up by themselves with the direct permission of the *daimyō*. Sometimes, when a farmer could not get this necessary permission, he would borrow the name of a *gōshi* and carry on the work in that name, because (and very naturally) it was easier for a *gōshi* to get the permission than for a common farmer. Sometimes farmers opened up new lands secretly, so as to escape the tax ; if this was detected, they were punished by fines. The whole of the land owned by farmers was not always contiguous. The plots were often in various places, according as they had been bought or opened up. Obviously the relative fertility of the soil in different sections would influence the clearing of the land. In addition to the foregoing, there were mountainous lands owned by the *mura*, but the great mass of mountain land was owned by the *daimyō* of the province. The *karō* had large sections of country alloted to them, so that their holdings

contained both lowlands and uplands—lands indeed that could be classed as *honden*, *shinden*, or mountain land. Over these they held complete control. From what has been said it will be seen that, with the exception of the lands of *karō* and *gōshi*, all the best land was under the direct control of the *daimyō* and could neither be bought nor sold. Only the less valuable mountain lands could be owned by the people and hence only such lands were transferable. The lands of the *daimyō* were all worked by tenants, and there was no distinction made between land which provided the lord's own rice and lands to provide rice for the *samurai*. This of course does not include lands specially allotted to upper class *samurai* for their support. Rice that was destined for the *daimyō's* private table was grown upon land that was set apart for that especial purpose.

Considering the division of the lands from another standpoint, there were *yashikichi* (house lands), which of course were uncultivated; *ta* (rice fields); and *hata* or *hatake* (up-lands), where wheat and barley with vegetables of various kinds were produced. In addition to these there were grass-lands, not on the plains, but on mountains, where the people of the *mura* gathered grass for forage and for making manure. These lands were generally owned by the *mura*. Upon the mountains there were *hara* (waste-land) and also large forests, both of which classes of land belonged to the *daimyō*. The uncultivated lands were very extensive owing to the extremely mountainous character of the country.

The arable lands were divided into districts called *azana*. The size of these *azana* varied according to the manner and extent in which the land had been originally cleared up. They served no other purpose than that of marking off and naming for the sake of convenience the various districts of the *mura*. These names are often associated with the men who originally cleared up the land;

for example *Torube Honden*, or *Torube Shinden*. The small divisions between the plots of land were called *aze*. These plots varied in size according to the slope as leveled for irrigation purposes, but none of them were large. The narrow *aze* were subject to change, but the broad ones could not be removed, as they marked the larger divisions. Smaller plots were designated by their *bangō* (number); for example *Torube Honden* No. 1 and No. 2, or *Torube Shinden* No. 3 and No. 4, etc.

MURA.

The *mura* or village is the only other division of the country which we need to consider, and it is one of the most important. Under the *kokushi* (that is, practically, at least as late as Yoritomo's time), the following arrangement obtained with regard to the *mura*. One man cultivated eight *tan*, and this was called *ichimyo*, (one-name). The amount differed in different *mura;* in some it was only 5 or 6 *tan*. Next, five men were associated under one head man, and the combination was called *go-myo* (five-names). These five men were banded together to help one another in case of need, and any small difficulties which arose among them were settled by the headman. Ten of these *gomyo*, numbering in all 50 men, were united under one headman and constituted the *gojiu myo* (fifty-names) or *isson* (one *mura*). The headman of the 50 was the headman of the *mura*, and had the general oversight of its affairs, settling all difficulties of importance that arose therein. Taxes were rated by the government not on the farmer directly but on the *mura* as such, each *mura* paying a certain fixed amount annually to the government officials. If any man was unable to pay his portion of the taxes, it had to be made up by his associates. It appears that in many cases the headmen of the *gojiu-myo* became wealthy and influential members of

society. Some of them even developed into petty lords. These men, whenever possible, allied themselves with *monbatsu* (men of good blood) from the other provinces, whose association secured for them a dignity not otherwise obtainable, and thus gave prestige to families that were originally of humble origin. In later times, under the Yamanouchi regime, the divisions known as *mura* were territorially of various sizes, according to the population of the country, to the situation of the lands n mountains or plains, or to previously existing social and political arrangements. Some *mura*, where the populations were sparse, extended over broad sections of country and possessed no real village centre. Other *mura* were restricted within narrow limits, consisting only of small collections of houses together with the adjacent fields. In some the houses were built together on one long street, and again in others they were scattered about among rice fields, and connected by mere paths along the *aze*. Thus it appears that there was no fixed rule for the size of a *mura* or for the arrangement of the houses of its inhabitants. Thus to understand the situation fully, we must not think of the *mura* as a collection of houses in one village, but rather as a territorial division of the country. The power of the *shōya* and *toshiyori* varied in different *mura*. The *gyoseikwan* and *shihōkan* were *han*-officials, not *mura*. The power of these officials up to a certain limit were exercised by the *shōya*. The head man of the *mura* was called the *shōya*, and was appointed by the *daimyō*. This office was for life and was hereditary. The family of the *shōya sama* was the most honored in the *mura*. It seems further that a man was more honored on account of his ancestors than of the land he might possess. Next to the *shōya* were the *toshiyori* (elders); these were paid in some places. There were also *gyōseikwan kori bugyo* (executive officers) and *shihōkwan* (judges). These various officials settled all the troubles of the *mura*. There were also *kumigashira*, unpaid company

chief, who looked after the lands generally throughout the *mura*. In addition to these there were *gonin-gashira* (five men-chief) having the oversight of certain village subdivisions. They were, however, not limited in their oversight to five men, as the name would seem to imply. The office must have been derived from the headman of the *gomyo*, in the time of the *kokushi*, the number five being retained in the name while the real sphere of the office was enlarged. There were no elections in the *mura*, nor was there a *yoriai* (assembly); the *toshiyori* and *kumigashira* were elected; and an assembly each year or at the time of a family festival, or there was a part *mura*. All executive business was transacted by the various officers. In the *mura* each farmer worked the land that he had rented, but the *mura* as a whole often owned mountain lands, called *kyoyazan*. The *mura* also often owned so-called *shinden* (land of the gods), the rice from which was either made into *sake* to be used on *matsuri* occasions, or was sold in order to obtain money for the expenses of the various *matsuri*. Each *mura* had to pay a settled amount of tax in rice, and this was collected, not by the *mura* officials, but by the tax collectors of the *daimyō*.

TAX (RENT).

The tax on *honden* and *shinden* would more properly be called a rent. If the land was held directly from the *daimyō* the rent was of course paid to him; but in the cases of upper class *samurai* the rent was paid directly to them, the *daimyō* receiving none of it. The *samurai* and *gōshio* who owned *yaguchi* and *ryōchi* paid no tax to the *daimyō* for these lands. They received rent from the tenants—all of which they kept for their own use. All farmers or *keikaku* who owned land paid taxes thereon to the *daimyō*. The tenants occupying the land of a *karō* paid their rent directly to him, and he passed none of it on to

the *daimyō*. All rents were paid in rice. Even in certain places where water rice could not be produced, an amount of rice was brought in based on the amount of dry land rice that could be produced there, whether the product of the land was in fact rice or not. This latter was not true of all lands that could produce dry land rice, but only of some very fertile low lands where there was a lack of water. Thus, though the rents were paid in rice, they were based not on rice as the actual product, but on rice as the standard of measurement of fertility. For example, if a renter had rice land assessed to produce twenty *koku* of rice, he had to bring in, say, three-fifths of that amount in rice whether he produced rice or something else on the land. From some of the very mountainous districts from which it was difficult to bring rice the rent could sometimes be paid in money. The price of the lands and the amount of rent to be paid was determined in accordance with the amount of rice the land could produce. If it was very good land, the rent was high and vice versa. Neither the valuation of the land nor the rent changed with the market; these values had been settled and oftentimes continued the same for many years and even for centuries.

For example, if a piece of land ought by the estimate to give ten *koku* of rice in rent, that amount was always required, even in cases of partial failure of crops. If, however, the farmer's loss was excessive, the amount of rent required was lessened, in accordance with the law of human fairness. The amount of reduction was generally settled by the officials and the farmers before the rice was cut. If no agreement could be made beforehand, the amount of rent was decided on by the officials after the harvest. Some times a portion of the crop would be cut and threshed out in the presence of officers of the law to let them see what the yield would probably be, and according to this an average was struck for the remainder. The rent was never wholly remitted. The amount of rice which the

tenant must pay was known beforehand by both parties to the contract, and the tenant on paying the rent received his receipt for the same. There were large *kura* (storehouses) in Kōchi for the storage of the rice, and thither on set days the farmers brought their quota on horses gaily caparisoned with blue, red, and yellow trappings, and with tails tied up in long and variegated bags. The amount of rent paid on *honden* was on an average three-fifths of what the land could produce. That on *shinden* was less, averaging only two-fifths of the land's productive capacity. The tenants on the *yaguchi* of the *samurai* paid about four-fifths of the rice produced,—a heavy rent it would seem; and yet we must remember that, besides the one crop of rice, vegetables and also a crop of barley or wheat could be produced annually on the same land, and for these latter no rent was taken. If the government or *samurai* cleared up land for cultivation, the rent was determined by taking the average of the crops raised during three years. Sometimes a tenant would undertake to clear up land for cultivation on the understanding that no rent at all would be expected until after a certain number of years, greater or smaller, according to the expense of the clearing. Land owners could not at their pleasure raise their rents. If this were attempted, appeal would be made to the government. Sometimes, however, the land owners combined and raised rents, and generally the government granted its permission. In addition to the tax on rice lands, fish sold in the market were taxed (as indeed is the case to-day). This tax was first imposed by Chōsokabe Motochika. The sale of paper and of cloth for clothing was also subject to the imposition of taxes. In the *jōka* dwelling-house lands were free. The merchants as a class possessed their own houses and engaged in trade, subject to no tax at all, but, as elsewhere in Japan in olden time, they had to be very polite to the *samurai* on penalty of losing their heads and having their property

appropriated. There was further a kind of tax called *tayaku*. It consisted of compulsory work upon the water-courses or public works of various kinds or the castle. This work was done annually by those tenants who occupied the *honden*. In very early days it had been assigned to the *samurai*, but being distasteful to them their farmers were hired to do it in their stead, each man receiving as his wage one *shō* of rice per day. At first the farmers were very glad of the opportunity to so add to their incomes, but in time the pay became relatively too small for the work done and they wished to withdraw from the bargain, but were not permitted to do so. As I have just remarked, this *tayaku* was connected with the *honden* only. Elsewhere the farmers were compelled to do the work on the water-courses without any remuneration whatever.

INHERITANCE.

The general law of inheritance amongst all classes was that of primogeniture, the eldest son of a property holder inheriting all at the father's death. When a man died without an heir his land reverted to the *daimyō*. As already stated, the eldest son of a *yōshi* inherited his father's position and property, and the younger sons became *heimin*. However, if there were no sons, the husband of the eldest daughter could as *yōshi* (adopted son) inherit both rank and property. When a tenant died, the continued cultivation of the land by his children depended on the circumstances of the case, or on the will of the *kumigashira* if the land belonged to a *samurai*. However, if the children were able to do the work and pay the required rent, they generally remained in possession.

Sometimes, when the eldest child was a daughter and the sons turned out badly, the father could by permission of the government adopt a son to become the daughter's

husband and make him the heir of his estate. With regard to adoption, if a father died without having selected a *yōshi*, no one could be subsequently chosen by the family and possess himself of the privileges of adoption and the estate consequently reverted to the lord; but if a selection had been made before the father's death, it could be formally ratified, provided permission was obtained from the government before the burial took place. After the burial permission was not obtainable. Hence it sometimes happened that a man's dead body was kept for eight or ten days, awaiting the government's permission for the adoption of a *yōshi* who had been selected but not as yet formally installed.

There were no banks in Tosa, but *riyōgaeya* (money changers) abounded. Money could be borrowed from individuals, and lands and goods were mortgaged to obtain it. It seems, however, that money was often borrowed on the simple promise to repay, which was considered a sufficient guarantee; for among *samurai* if a man could not keep such a promise he committed *harakiri* rather than bear the disgrace of a broken bond.

Trade between Tosa and other provinces was very limited in extent, for there was a law prohibiting general exportation, and only a few articles were allowed to be sent abroad; and even in these the trade was permitted only to a chosen few. Similar restrictions conditioned importation. A few tradesmen in Osaka were permitted to send certain articles that were needed in the province, and that was all. Therefore, as was the case throughout Japan in pre-revolution days, the province of Tosa lived its own secluded life and the more readily developed a peculiar and striking individuality,—the traces of which are still so prominent in its social life and its politics.

SUMA MURA FIFTY YEARS AGO.

By Miss Hannah M. Birkenhead.

[*Read 28th April, 1892.*]

The Province of Settsu, in which Suma is situated, was under the direct rule of the *Shōgun*. The chief officers were *Shoshidai*, *Bugyō* and *Daikwan*. These were all *Hatamoto* when in Yedo. There was one *Shoshidai* (Kyoto), one *Bugyō* (Ōsaka), but many *Daikwan*. One of the last had charge of Hyōgo and Suma.

The *Daikwan's* duties were to gather rice, to settle disputes, to act as spy, and to prevent neighbouring *Daimyōs* from combining against the Tokugawa. If the *Daikwan* held his appointment directly from the *Shōgun* the rice was sent to Yedo; if from *Shoshidai*, to Kyōto; if from *Bugyō*, to Ōsaka, or to a store-house at Hyōgo to wait till a sufficient quantity had been gathered before sending away.

Suma was itself a *mura*, extending from Myohoji River on the east to Sakai River, Harima, on the west; and from Tainahata *mura* on the north to the sea on the south. It was divided into East and West, and it is thought the original *mura* was situated in the middle. There was a street of dwellings—a continuation of the Tōkaidō—with scattered farms outside.

LAND-OWNERS.

Fifty years ago there were six great land-owners in Suma. Mayeda Sakujirō and Naoe Tōzaemon in the west, Matsuda Gimbe, Tomokuni Magozaemon, Edamitsu Magozaemon in the east, and Tomokuni Zingozaemon in the north. Mayeda was the richest. He was *Shōya* or Headman, and was allowed to wear one sword. His fame was celebrated in verse as follows:—

Saite shiworete,
Mata sakuhana wa,
Suma no Mayeda no
Kakitsubata."

(The flower which, having opened and withered, blooms again is the iris of Mayeda of Suma).
And again:—

"Suma no Mayeda no
Kakitsu no naka ni
Ayame saku to wa
Shirananda."

(We did not know the sweet-flag would grow among Mayeda's irises). Mayeda could pass from the eastern to the western boundaries of Suma without leaving his own land. The Empress Jingukogo is said to have passed through Suma on her way to Corea (202 A. D.), and to have visited his ancestor's house. When the battle of Ichi-no-Tani, fought at Suma between Genji and Heike, is represented in drama, this once famous land-owner is always among the characters personated. The irises are still flourishing in the ditch in front of Mayeda's house, but the old home has lost its glory. It is now a small tea-house kept by the latest representative of the once honoured name.

The large land-owners had no special privileges, but they were indirectly influential. They were eligible for the office of headman. This position they sometimes got

by appointment, sometimes by payment. The headman was allowed to build his house in a special style, peculiar to the *Shōya*. Several of the men who held this position became rich by cutting down and selling trees belonging to the Government, which had been placed under their care, and which the people were not permitted to touch. The *Shōya* claimed annually six *koku* of rice from the villagers. There were six or seven Elders (*Toshiyori*), but they received no remuneration. The *Shōya* and Elders alone sat in the Village Assembly and voted.

The only inhabitants of the *mura* not engaged in agriculture were fishermen, and a few *kago-kaki* (carriers).

Among present land-owners in Suma, Naoe Tōzaemon in the west, and Tomokuni and Edamitsu in the east, claim to have held their ground the longest. Lately, in East Suma, an old tombstone was unearthed, with a date of about 1,200 years ago, and the name Tomokuni Tarōzaemon.

CROPS.

The chief productions were rice, wheat, and vegetables of various kinds. Rice was cultivated from May to August, wheat from August to May, on the same fields—"*ta*" land. Beans were grown in summer, and *daikon*, cabbages, and other vegetables in winter—on *hatake* fields.

The most famous vegetable production of Suma—the *meibutsu*—was water-melon. It was peculiar in having red seeds, the melon of other places generally having black ones.

POSSESSION OF LAND AND RENT.

Each farmer had land in several parts of the *mura*, and took new ground as he needed it. In case of shifting, a middleman was employed, and a written account of the

transfer was exchanged by the parties concerned. The affair was reported to the *Shōya*, so that at the time of gathering rice he might know what land each farmer had. An examination was held for this purpose every spring.

The rent was about one *koku* five *to* for each *tan*, a reduction of two or three *to* being made for poor ground. The rate of rent was settled by arbitration, the people of East Suma being always more quarrelsome than those of the West.

Land could be leased for any length of time. If a tenant did not pay his rent the owner could take the ground back, but this was a rare occurrence.

TEMPLE LANDS.

There were four temples in Suma: Genkōji, Myokōji, Jōtokuji, and Suma-dera. The last was the largest, and owned two *chō* of land. All had received their ground from the Shōgunate. Genkōji had many members, who made it rich with their offerings. The temple lands could not be taxed. All these were taken by Government at the Restoration except the grounds occupied by temple buildings, which are still free of taxation.

Suma-dera was founded by Hideyori, the son of the great Taiko Hideyoshi. Its priests had formerly political as well as religious influence, and were treated with great respect by the people.

After the Restoration the farmers gave four *tan* of land to Jōtokuji, and three *tan* to Myokōji.

Expenses for repairing the temple were drawn from the central temple in Yedo.

The lands were originally cultivated by priests, but afterwards by hired labourers.

The priests had no right to sell or mortgage their lands, but they sometimes did so unlawfully. They could let ground to farmers, who paid for it at the usual rate.

TAXES.

Before the Restoration taxes were paid according to the estimated producing power of the land, partly in money, but chiefly in rice. The *Daikwan* made an examination and then gave a written statement of the amount due to the Government. (Appended is a translation of one of these documents.) The *Daikwan* could not be oppressive, as he had to consult with the *Shōya* and Elders of the *mura*. In time of calamity the Government excused those who were not able to pay their taxes.

The people seem to have been peaceable and diligent, and there has never been any great struggle in Suma.

Now, taxes are paid for the land itself, at the rate of 2½ % of its value, without regard to crops.

RECLAIMED LAND.

There was land without owners which was cultivated by persons who took the crops and paid the taxes. At the Restoration the ground became the property of those persons. One such place was *Tsuki-mi-Yama*, which now belongs partly to Government and partly to the people.

When the Shōgunate was abolished, the extent of land allotted to each person was changed by Government order. This was formerly settled by *Shōya*, who did it rather arbitrarily.

FENCING AND DRAINAGE.

When two persons wished to divide their lands by fences, each man made one on his own ground, and a free

path, one *shaku* wide, was left between. Both men were afterwards responsible for the keeping of the intermediate roadway in good condition.

Suma has a dry, sandy soil. Its fields were formerly supplied with water by means of ponds near the sea, and wells on the mountain side. When the ponds or wells got out of order they were restored at the expense of the Government. In these days the farmers themselves have to pay for such repairs.

Near Mayeda's house is a famous well called "Suga ido," the name having been given by Prince Sugawara Michizone. In winter, the water of this well keeps a certain level, but in summer it overflows, and helps to irrigate the fields.

The place where Suma railway station now stands was in olden days covered by the sea.

DISASTERS.

The disasters were generally caused by storms or drought. The ones well remembered are :—

Meiji, 16th Year.—		Drought, which ruined rice and vegetables.
" 17th	"	Too much rain, making wheat rotten.
" 19th	"	Storm.
" 22nd	"	Drought.
" 24th	"	Storm.

The old people say it was much the same in their younger days. The big storm of 1891, the greatest during the last seventy years, did much damage in Suma. Government had to help the farmers, but such help is unusual now.

In entering Suma from the east, there is an aqueduct over which the river Tenjo runs. Sometimes the *mura* is partly flooded by that river.

SUCCESSION.

The eldest son of a family was generally the sole heir. When he came into possession it was customary for him to take his father's name. In this way, the head of one family would have the same personal and surnames for many generations. There was no law about succession except that it must be reported to the *Shōya*. It was not usual to make a will.

In regard to succession, women had no rights. When a father had a daughter but no son, the property was still kept in the father's name. If a son were adopted and made heir, he changed his name for that of his adoptive father.

If the eldest son's conduct was very bad, it was not an uncommon thing for the second son to take his position.

The heir had to pay all the debts of his ancestor, no matter how small the inheritance or how great the debts.

THE SUMA OF TO-DAY.

Land in Suma is now rapidly rising in value. The place is only five mil s by rail from Kobe, and is becoming noted as a health resort. Wealthy foreigners are leasing ground on the hill sides or by the sea, and building country homes, where they can enjoy the fresh breezes and the sweet scent of the spruces, and from where they can watch the sea-birds flitting across the stormy Straits of Akashi, as in the good old days of the Tokugawa, when the people sang:—

"Awaji shima
Kayō chidori no
Naku koye ni
Ikuye nezamenu
Suma no sekimori,"

(The guards of the Suma barrier hear in their dreams the cries of the sea-birds going to and returning from the Island of Awaji).

NOTES.

Ta=grain land.
Hatake=vegetable gardens.
Aratame=changed, as to crops.
Shinden=newly opened land.
Okoshikaeshi=tilled ground.
Matsu-goki-tachi=pine trees and bushes.
Magusaba=pasture.
Honhata=upland fields.
Hatakata=hill-side.
Take-ko-tachi=forest of bamboo and other trees.
Matsu-ki-tachi=pine trees-

TRANSLATION.

The Fixed Taxes of *Ushidoshi*. For ten years from *Ushi* to *Inu*. Total amount 1,020 *koku*, 6 *to*, 4 *sho*.

Higashi Suma mura,

Yabegun, Settsu-no-kuni,

TA LAND.

Items.

930 *koku*, 9 *to*, 3 *sho*, 7 *go*. From this amount the following are taken out:

103 *koku*, 2 *to*, 3 *sho*, 3 *go*,=ground taken up by houses, ditches, dikes and wells;

2 *to*, 5 *sho*, 6 *go*=places where sand is deposited.

Net Amount, 827 *koku*, 4 *to*, 4 *sho*, 8 *go*.

Items.

Amount 801 *koku*, 4 *go* (=the value of the land measured by rice).

HONDEN.

596 *koku*, 8 *to*, 8 *sho*=tax.

The rate is 7 *shaku*, 4 *bu*, 5 *rin*, 2 *mo* (that is about $\frac{25}{100}$).

Amount, 6,970 *go*, Nennen Shinden.

3,700 *go*=tax .....5. 308 r.

Amount, 11. 151 *go* Mi.

5.120 *go*=tax .....4. 572 r.

Amount, 1. 182 *go*, "Inu," Aratame Shinden.

542 *go*=tax. .....4. 585 r.

Amount, 102 *go* "Inu, Mi." Shinden.

46 *go*=tax. .....4. 500 r.

Amount, 290 *go* "Mi, Hitsuji, Tori," Shinden.

131 *go*=tax. .....4. 500 r.

Amount, 416 *go* "Mi," Okoshikayeshi.

187 *go*=tax.....4.500 r.

Amount, 222 *go*. "Mi, Hitsuji, Tori" Shinden.

88 *go*=tax.....3.964 r.

Amount, 1.227 *go*. Last "*I*," Matsu gaki tachi okoshikaeshi.

123 *go*=tax.....1.000 r.

Amount, 3.549 *go*, "I" Okoshikayeshi.

213 *go*=tax ..... .600 r.

Amount, 1.335 *go*, Last "I" Magusaba okoshikaeshi.

40 *go*=tax ..... .300 r.

The whole amount of *ta* land is 607 *koku*, 7 *sho*=tax.

HATAKE LAND.

89 *koku*, 7 *to*, 3 *go*. In this there is 131 *go* of *ta* changed into *hatake* land. From the amount the following are deducted :—

120 *go*—for land on which the village storehouse stands.

32 *go*—for sand deposits, erosive banks, and land broken by the river.

Net Amount, 89 *koku*, 2 *to*, 8 *sho*, 1 *go*.

Items.

Amount, 70,583 *go*. Honhata.

38.516 *go*=tax.....5.4572 r.

Amount, 2.900 *go*. Shinyajichi.

1,357 *go*=tax.....6.493 r.

Amount, 520 *go*. Nennen Shinden.

276 *go*=tax .....5.308 r.

Amount, 679 *go*. "Inu," aratame Shinden.

311 *go*=tax .....4.584 r.

Amount, 1,219 *go*. "Mi, Hitsuji, Tori." Shinden.

484 *go*=tax.....3.970 r.

Amount, 152 *go*. "Inu, Hitsuji," Shinden.

53 *go*=tax.....3.500 r.

Amount, 131 *go*. "I"—The old "ta" land changed into *hatake*.

46 *go*=tax.....3.500 r.

Amount, 247 *go*. "Tori" Okoshikayeshi.

842 *go*=tax.....3.500 r.

Amount, 2,555 *go*. "Tori, U," Okoshikayeshi.

824 *go*=tax.....3.225 r.

Amount, 327 *go*. "Mi" Okoshikayeshi.

105 *go*=tax.....3.217 r.

Amount, 3,110 *go*. "Tori" Okoshikayeshi.

933 *go*=tax.....3.000 r.

Amount, 1,895 *go*. "Uma" Okoshikayeshi.

474 *go*=tax.....2.500 r.

Amount, 181 *go*. Last "I" Hatakata okoshikayeshi.

36 *go*=tax .....2.000 r.

Amount, 610 *go*. Last "I" Take kotachi okoshikayeshi.

61 *go*=tax .....1.000 r.

Amount, 2,822 *go*. Last "I" Magusaba okoshikayeshi.

85 *go*=tax .....3.000 r.

The whole amount of *hatake* land is 44 *koku*, 4 *to*, 3 *go*=tax.

The tax on the best land is 651.473 *go*.

Amount 3 *koku*, 4 *to*, 6 *sho*, 6 *go*, all Shinden, in the same mura. From this 336 *go* is deducted as allowance for land broken by river and for sand deposits. Remaining amount 3,130 *go*.

Items.

Amount 2,566 *go* Honbata.

642 *go*=tax .... 2.502 r.

Amount 222 *go*. Last 'I' Matsuki tachi okoshikayeshi.

22 *go*=tax..... 1.000 r.

Amount 342 *go*. Okoshikayeshi.

20 *go*= tax..... 585 r.

Whole amount of taxes=684 *go*. 'Ta' land. Shinden of same mura.

Amount 835 *go*.

450 *go*=tax..... 5.389 r.

Total amount of taxes for Shinden, 1,134 *go*.

The total amount of taxes in rice is 652,607 *go*. 612,499 *go* is to be paid in silver; 490,108 *go* is to be paid in rice. Besides these there are :—

38 *momme*, 5 bu, silver

The Government forest grass tax;

615 *go*, rice.

Expenses for lodging of post horses;

2050 *go*, rice.

Expenses for nobles' 'kago' bearers;

153 *momme*, 7 *bu*, 4 *rin*, silver.

Expenses for Government store-houses.

FORESTS.—FIVE PLACES.

The area of land is 74 *chō*, 9 *tan*, 7 *se*, 14 *bu*.

Total Rice—655,272 *go*—Silver, 192 *momme*, 2 *bu*, 4 *rin*.

The above being fixed, the farmers and tenants must meet and pay their taxes before the 15th of December.

(Signed) Ishibara Shiozaburō. (*Daikwan*).

October, 9th year of Kansei.

ASIATIC SOCIETY OF JAPAN.

MINUTES OF MEETINGS.

Meeting of October 21st, 1891.

A General Meeting of the Asiatic Society of Japan was held on Wednesday, October 21, 1891, in the hall at No. 17, Tsukiji, at 4 p.m., Rev. G. W. Knox, D.D., Vice-President, in the Chair.

The Minutes of the last meeting were taken as read.

It was announced that three new members had been elected,—Mr. Harold G. Parlett, Rev. W. I. Lawrance, and Mr. M. de Bunsen.

The Corresponding Secretary informed members that the Rules of the Society up to date had been printed, and copies could be had on application.

Thereafter several papers contributed by Dr. Joseph Edkins of Shanghai were read by Mr. Dixon. They were three in number, and entitled as follows: "Proofs that the Japanese Language belongs to the Ural Altaic Stem, and is more distantly related to European tongues;" "Pott's view of the Genealogical Relationship of the Japanese," and "Ancient Chinese Civilization."

A short discussion followed. Mr. Dixon remarked that in the edition of Chamber's Encyclopædia now appearing, an article from the pen of Dr. Legge did not concede that the existence of Parsian elements in Chinese Civilization had been proved.

The Chairman remarked that Chinese elements were to be traced in the *Kojiki*. Although he would not venture into Dr. Edkin's own field of roots, still he thought that many of the conclusions were a little fanciful. About the astronomical argument, it counted for much less than might appear on the surface. The evidence depended on a special rendering of an obscure and highly rhetorical passage in the Shu Kien, a work not written by a contemporaneous author. The interpretation of the text might well be questioned.

Dr. DIVERS endorsed the Chairman's remarks. The whole question seemed to be begged by the author of the paper. Mr. Droppers, taking up the references to the death of retainers and to Herbert Spencer, contended that Dr. Edkin's had proved nothing. The custom of retainers immolating themselves at their chief's grave was found even among the hill tribes of Africa. Its presence in China was as little significant as its absence would have been, for the custom was wide-spread. Herbert Spencer's explanation, that the retainers thought it only right to follow their chief into the Spirit land, seemed quite a good one; there was no need of postulating a Persian origin.

The Chairman expressed the thanks of the Society to the author for his interesting papers, after which the meeting adjourned.

Meeting of January 20th, 1892.

A General Meeting of the Society was held in the Hall, No. 17, Tsukiji, Tokyo, on January the 20th, 1892, at 4 p.m., the Vice-President, Rev. G. W. Knox, D.D., in the chair.

The Minutes of the last meeting were taken as read.

It was announced that the name of N. J. Hannen, Esq., for long President of the Society, had been added to the list of honorary members. Two ordinary members, Mr. R. de B. Layard, and Mr. F. J. Norman, and one life member, Mr. C. W. Low, M.B., had also been elected.

It was also announced that the President, B. H. Chamberlain, Esq., who had just left for Europe on a year's visit, had previously placed his resignation in the hands of the Council. This resignation, however, the Council had decided not to accept, as they hoped so soon to welcome their President back again to Japan. This being all the business, the Vice-President vacated the chair, and J. M. Dixon, Esq., was called to fill it.

DR. GEO. W. KNOX then read extracts from a lengthy and valuable paper entitled "A Japanese Philosopher."

Dr. KNOX also read a series of extracts from the Surugadai Miscellany, having apologized for the bald style of the translation, which does but scant justice to the musical flow of the original.

The translation now offered set forth the philosophy and religion, the ethics and politics, both theoretical and applied, and the copious

historical illustrations of this treatise. Other matter, as literary criticisms, discussions on poetry, and mere ornaments of Japanese style, had been eliminated.

Mr. Dixon expressed the greatest satisfaction with the paper which Dr. Knox had presented to the Society. The introduction presented in a clear cut and systematic form the salient points of the philosophical history of Japan, regarding which our ideas were apt to be a little hazy. Among the literary men of the Tokugawa period Muro Kyuso held a prominent place, and is mentioned with Hayashi Razan, Ogiu Sorai, and Arai Hakuseki. A few days ago Mr. Dixon was successful in finding his tomb. On the northern slope of the hill upon which the Gokokuji Temple stands, and close to the paling of the Imperial Cemetery in Otsukamura, Koishikawa, is situated a plot of ground known as *Jusha Suteba*—"The Place for casting away Chinese Scholars." The broad highway recently engineered to the new convict prison beyond, leads very close to the pathway conducting to this humble burying ground. Kyuso's tomb will be found on the extreme right, a simple stone pillar, about three feet high, of nearly square section, perhaps nine inches by eight. His wife's tomb, still more unassuming, rises on the left side of the husband's. She died in the 4th year of Horeki. Mr. Dixon hoped at the next meeting to be able to furnish members with a photograph of the spot.

The meeting then adjourned.

Meeting of February 10th, 1892.

A General Meeting of the Society was held at its rooms, No. 17, Tsukiji, on February 10th, 1892, at 4 p.m., the Vice-President, Rev. Geo. Wm. Knox, D.D., occupying the chair.

The minutes of the last meeting were taken as read.

The resignation as a Councillor of the Society of the Rev. Jas. L. Amerman was announced, and reference was made to his former valuable service, as President, and the great regret which the Society felt at his departure.

It was also announced that Dr. F. B. Stephenson, of the U. S. S. *Marion*, and Rev. J. H. De Forest, of Sendai, had joined the Society.

Some photographic prints of the grave of Kyusō, the "Japanese Philosopher," referred to at the last meeting, were handed about for inspection by those present.

Before proceeding to the paper of the day, Professor Dixon asked leave to add a note to his last contribution to the Society, "On the Habits of the Blind in Japan." One method of teaching the blind the written characters is worthy of notice. The figures are traced by the forefingers of the teacher on the back of his pupil, who is thus enabled to reproduce them again.

Professor Dixon then read a paper entitled, "Chōmei and Wordsworth: A Literary Parallel."

The CHAIRMAN thanked the reader of the paper for the interesting article with which he had furnished the meeting, and went on to speak of the great difficulty of comparing Western and Eastern literature. To the Chinese much of our Western literature seemed crude and unfinished. The Eastern attitude towards things was wholly different from ours, and the longer one resided there, the greater was one struck by the radical divergence. Nature to them was a kaleidoscope,—a series of change without rest. Chōmei had been criticized severely by late authors of the Confucian school as a mere æsthete, in whose teaching righteousness and benevolence were absent. His attitude towards nature was certainly a very contracted one. This might be said of Japanese literature generally; it circled round a few well threshed subjects. Take them away and nothing remained. For example, the moon was often referred to as a type of the transient in life, and the speaker quoted a poem to that effect. But what about the stars? He remembered no reference whatever to them. Possibly it might be that astronomy was avoided as its study, according to one writer, was always marked by an increase of wickedness. Wordsworth's feeling towards nature, and to man as a solitary, was wonderfully different from that of Chōmei. Dr. Knox quoted a passage from the *Excursion* to illustrate this point.

Professor TISON had been struck by the indifferentism expressed in the paper. It reminded him of the English poet mentioned by Emerson whose teaching amounted to this—that nothing really mattered very much. There appeared also much that reminded him of Rousseau.

Mr. DIXON said that Rousseau's teaching really was in singularly close sympathy with Japanese life.

The Note on Dr. Knox's paper announced on the postal cards was held over till another meeting, owing to its unexpected length and importance.

The meeting then adjourned.

Meeting of March 9th, 1892.

A General Meeting of the Asiatic Society of Japan was held in the Rooms, No. 17, Tsukiji, on Wednesday the 9th of March, 1892, at 4 p.m., the Vice-President, Rev. George Wm. Knox, D.D., occupying the Chair.

The Minutes of the last Meeting were taken as read.

It was announced that M. N. Wyckoff, Esq., had been appointed Treasurer in room of Dr. J. N. Seymour, resigned, and that Professor Milne had been elected a Councillor to fill the vacancy caused by Dr. Amerman's departure.

The Corresponding Secretary also informed the Meeting that the President, B. H. Chamberlain, Esq., and F. V. Dickins, Esq., had been nominated as delegates to the Ninth International Congress of Orientalists, to be held in London in the autumn of the current year.

Rev. D. C. Greene, D. D., was then called to the Chair to enable the Vice-President to read the literary contributions of the day.

The first paper was a "Note on Japanese Schools of Philosophy" by Professor T. Haga, of the Imperial University, which was read by Dr. Knox. This was followed by "Comment on the foregoing note," and a paper on "Ki, Ri and Ten," by Dr. Knox.

Prof. Inouye, of the Imperial University, took part in the discussion which followed.

Dr. Divers addressed the meeting, not as an ontologist, for he had no special knowledge of these subjects. He represented his colleague, Mr. Haga, to whom the Society was greatly indebted. Mr. Haga had studied these subjects with zeal some years ago, merely as an amateur, and Dr. Divers had with difficulty prevailed upon him to follow up with a reasoned out discussion a chance critical remark he had happened to make.

As to two books, which had been shown, with elaborate figures representing existence in all its phases—a complete system of natural philosophy,—Dr. Divers suspected that Dr. Knox had read the ideas of modern philosophy into these ancient writings; they seemed to him mystical rather than philosophical. He admired the way in which the Japanese, in philosophy as in other departments, had borrowed only to improve. Jinsai appeared to him far ahead of Shushi—he only spoke as an outsider, however.

Rev. Hugh Waddell protested against the flippant manner in which the audience had treated the circles and diagrams, illustrative of existence which had been shown to them. Surely it was a good thing that men in the Far East should busy themselves over these

things. A circle was a very good emblem of infinity. For him the Teishu school seemed to be closely allied with the idea of the Stoics to be pantheistic, to recognize a God in nature, animating nature; active but not extraneous.

Dr. DIVERS expressed his pleasure that Mr. Waddell had at length been drawn to express himself on these subjects. The Society had long been waiting for a philosophical contribution from his capable hand. Dr. Divers also expressed his surprise at the opinion Ohashi had formed of foreigners, as if they were all scientific men.

The meeting then adjourned.

Meeting of April 27th, 1892

A General Meeting of the Society was held at the Rooms, 17, Tsukiji, on the 27th April, 1892, the Vice-President, Rev. Geo. Wm. Knox, D.D., occupying the chair.

The minutes of the last meeting were taken as read.

There was a very full attendance. It was announced that the Rev. L. Ryde had been elected an ordinary member of the Society.

A paper by the Rev. JNO. BATCHELOR, entitled "Specimens of Ainu Folk-Lore," was read by the Corresponding Secretary. It contained several legends, the sequels of others already printed by the Society in Vols. XVI. and XVIII., of which the original Ainu was given.

Mr. MILNE spoke of the value of folk-lore stories, however childish in themselves they might be, as helping us to trace the race affinities of a people. He was sure the Ainus had some connection with extinct races in eastern Europe.

Mr. DIXON remarked that he was struck with a certain incoherence in the legends, an absence of picturesqueness, and of clearness, which made him a little suspicious of their value. He was not quite sure that the Ainu who had related them was not drawing upon a not over-fertile imagination.

The next paper, contributed by the Rev. R. B GRINNAN, was read by Mr. Wigmore. It was entitled "Feudal Land Tenure in Tosa,"

Dr. KNOX spoke of Tosa as a district in which he happened to have a special interest. It was a country studded with the ruins of castles, for the people in the earlier feudal times had never owned the sway of any great lord and had developed considerable independence of

manner and character. They prided themselves on their frankness and courage. These qualities might result from the constant fighting in which even farmers engaged; and also the fact that many bold warriors had been driven from the mainland to seek a shelter in the inviolable recesses of the Shikoku mountains. Speaking of land-tenure, he understood that the *rikosaku* were perpetual tenants who had a right to all their improvements, and who at the Restoration became complete owners. Another system of holding was where the upper three feet of the soil was granted by *samurai* landlords to tenants who had brought the land under cultivation; the landlord merely gained in social rank and importance and not monetarily. The Tosa farmers were as a rule neither large nor small.

Mr. WIGMORE, in referring to the groups of five, ten of which made up a village guild, stated that this was a very old division dating back at least to the 5th or 6th centuries. He then criticized the use of the word "rent" as applied to the annual contribution in rice. Economically the use of the term might be defended, but legally their payment was a tax, as most of the proceeds went directly to the expenses of Government.

Mr. KIRBY spoke of the division population into groups of five as dating from the time of Mencius, in whose works such a disposition was to be found.

Dr. KNOX, referring to a remark in the paper, mentioned one method by which hapless merchants could defend themselves against the otherwise complete tyranny of the *samurai*. If they spat on a *samurai* he had to commit *harakiri* forthwith.

Portions of a paper by Miss Helen Birkenhead, entitled "Suma Mura Fifty Years Ago," were read.

The CHAIRMAN thanked the authors in the name of the Society for their interesting contributions. The meeting then adjourned.

ANNUAL MEETING.

The Annual General Meeting of the Society was held in the Rooms, 17, Tsukiji, on Wednesday, 8th June, at 4 p.m. The Vice-President, Rev. G. W. Knox, D.D., occupied the chair.

The minutes of the last meeting were taken as read.

It was announced that Dr. L. Riese and Mr. G. Holmes had been elected resident members, and Dr. Argyll Robertson a life member.

Professor Milne gave notice of a motion to amend Article VI of the Constitution so as to have $50 as a commutation fee for resident members, to be decreased $2.50 yearly for every subscription paid. Thus a subscriber would cease to pay in 20 years.

The CHAIRMAN asked Prof. Milne to reduce his amendment as proposed to writing, which was done in the following terms:

"Any person joining the Society can become a life member by the payment of $50, or any person already a member can become a life member by the payment of $50 less $2.50 for each year in which be has been an ordinary member."

The following reports were read and approved of.

REPORT OF THE COUNCIL OF THE ASIATIC SOCIETY FOR THE SESSION, OCTOBER, 1891–JUNE, 1892.

The Council has every reason to congratulate the Society on a successful year of work. The permanent housing of the Library at No. 17, Tsukiji, where are provided convenient rooms for the Meetings of Council and the General Meetings, has proved an eminently suitable arrangement.

The number of General Meetings has been fewer than usual, but this is not accompanied by any diminution in the material printed by the Society. General Meetings were held in October, January, February, March, April, and June—six in all. Dr. Edkins's papers on philology read in October were unfortunately lost by the Corresponding Secretary on the way home from the meeting in Tsukiji, and have never been recovered. It will be impossible to replace them, but the author has kindly promised fresh contributions. The efforts of the Society's Committee on Ethnography have not proved fruitless, two at least of this year's papers being directly due to its inquiries. The Committee on the Tokugawa Laws, which owes almost everything to the active enthusiasm of Professor Wigmore, has already furnished the Society with voluminous matter, to be printed as a Supplement to the current volume. The Volume with its Supplement will contain more matter than the Society has ever yet printed in one year.

At the beginning of the session the Council resolved to entrust its printing to the Yokohama firm which for many years was identified with the Society.

Owing to the increase in the number of Societies on the List of Exchanges, it was thought best to discontinue exchanging with several of them whose work hardly lay within the sphere of our interests and work. A comparison of this year's list with last year's (as found in Appendix B) will show what are the omissions.

The Society is represented at the Ninth International Congress of Orientalists, which will hold its sittings in London, in the autumn of this year, by its President, B. H. Chamberlain, Esq., and by F. V. Dickins, Esq.

New members continue to be added to the roll of the Society. During the past year nine resident and three non-resident members were elected. The Society conferred Honorary membership on its late President, N. J. Hannen, Esq.

The Treasurer's statement continues to show a satisfactory balance in our favour. This will, however, be materially lessened by the heavy printing expenses connected with the issue of the Supplement to the current balance.

During the current year the Society lost by death one of its oldest members, the Rev. James Summers, who for several years held important offices, and was ever zealous in the Society's interests.

APPENDIX A.

LIST OF PAPERS READ BEFORE THE SOCIETY DURING THE SESSION 1891–1892.

"Proof that the Japanese Languge belongs to the Ural-Altaic stem, and is more distantly related to European tongues," by Rev. J. B. Edkins, D. D., Shanghai.

"Pott's View of the Genealogical Relationship of Japanese," by the same author.

"A Japanese Philosopher," by Rev. Geo. Wm. Knox, D. D.

"Chōmei and Wordsworth: a Literary Parallel," by J. M. Dixon, Esq.

"A Note on Japanese Schools of Philosophy," by T. Haga, Esq.

"A Comment on Shushi's Philosophy," by Rev. Geo. Wm. Knox, D. D.

"Ki, Ri and Ten," by Rev. Gev. Wm. Knox, D. D.

"Specimens of Ainu Folk Lore," by Rev. Jno. Batchelor.

"Something more about Shushi's Philosophy," by T. Haga, Esq.

"Feudal Land Tenure in Tosa," by Rev. R. B. Grinnan.
"Suma-mura Fifty Years Ago," by Miss H. M. Birkenhead.
"On Japanese Swords," by J. M. Dixon, Esq.

Appendix B.

List of Exchanges.

Academy of Natural Sciences, Philadelphia; Proceedings.
" " Sciences of Finland (Acta Societatis Scientiarum Fennicæ).
Agricultural and Horticultural Society of India; Journal.
American Association for the Advancement of Science.
" Geographical Society, New York; Bulletin and Journal.
" Oriental Society, New Haven; Journal.
" Philological Association, Boston; Transactions and Journal.
" Philosophical Society, Philadelphia; Proceedings.
Annalen des K. K. Natur Hist. Hofmuseum, Wien.
Anthropological Institute of Great Britain and Ireland.
Anthropologische Gesellschaft in Wien; Mittheilungen.
Asiatic Society of Bengal; Journal and Proceedings.
Australian Association for the Advancement of Science.
" Museum, Sydney.
Bataviasch Genootschap; Notulen. Tidjschrift. Verhandlungen.
Boston Society of Natural History; Proceedings.
Bureau of Ethnology, Annual Reports; Washington.
" " Education, Circulars of Information; Washington.
California Academy of Sciences.
" State Mining Bureau; Report.
Canadian Institute, Toronto; Proceedings and Reports.
China Review; Hongkong.
Chinese Recorder; Shanghai.
Cochinchine Française, Excursions et Reconnaisances, Saigon.
Cosmos; di Guido Cora, Turin.
Deutsche Gesellschaft fur Natur -und Völkerkunde Ostasiens, Tōkyō: Mittheilungen.
Geological Survey of India; Records.
Geographical and Natural History Survey of Canada.
Handelsmuseum, Wien.
Harvard University, Museum of Comparative Zoology; Bulletin, Papers, etc.
Imperial Observatory, Rio Janeiro.

Imperial Russian Geographical Society; Bulletin and Reports.
" Society of the Friends of Natural Science (Moscow), Section of Anthropology and Ethnography; Transactions.
Imperial University of Japan, College of Science; Journal.
Japan Weekly Mail, Yokohama.
Johns Hopkins University Publications, Baltimore.
Journal Asiatique, Paris.
Kaiserliche Leopoldinische Carolinische Deutsche Akademie der Naturforscher; Verhandlungen, Nova Acta.
Musée Guimet, Lyons, Annales et Revue, etc.
Oesterreichische Monatsschrift fur den Orient.
Observatorio Astronomico Nacional de Tacubaya, Anuario Mexico.
" Meteorologico, Monte Video.
Ornithologischer Verein in Wien, Mittheilungen.
Royal Asiatic Society of Great Britain; Journal, etc.
" " " Bombay Branch; Journal.
" " " Ceylon Branch; Journal and Proceedings.
" " " China Branch; Journal.
" " " Straits Branch; Journal.
" Dublin Society, Scientific Transactions.
" Geographical Society; Proceedings.
" " " New South Wales Branch.
" Society, London; Proceedings.
" " of Edinburgh; Proceedings.
" " New South Wales.
" " Tasmania.
" " of Queensland.
Seismological Society of Japan; Transactions.
Smithsonian Institute, Washington D.C.; Reports, etc.
Sociedad Geográfica de Madrid; Boletin.
" de Geographia de Lisboa, Boletin, Lisbon.
Société Académique Indo-Chinoise, Saigon.
" de Géographie; Bulletin et Compte Rendu des Séances, Paris.
" des Études Japonaises, Chinoises, etc., Saigon.
" d'Anthropologie de Paris; Bulletins et Mémoires.
" d'Ethnographie, Bulletin, Paris.
Société Neuchateloise de Géographie, Bulletin, Neuchatel.
Sydney, Council of Education, Report.
University of Toronto.
United States Geological Survey.
" " Department of Agriculture.

Verein für Erdkunde, Leipzig: Mittheilungen.
Zeitschrift der Deutschen Morgenländischen Gesellschaft, Leipzig.

Appendix C.

Asiatic Society's Accounts for the Year ending May 31st, 1892.

Dr.

To the Hakubunsha, for printing	$ 555.215
To Postage and Stationery	25.955
To Insurance on Library and Transactions	32.500
To Rent of No. 17, Tsukiji	100.000
To Illustrations for Transactions	24.500
To Librarian, for removing library; books and postage .	62.540
To Kelly & Walsh, Books for Library	70.750
To Translation	140.000
To Copying	13.800
To Advertising	5.000
	$1,100.260
Balance	2,318.435
	$3,418.435

Cr.

By Balance from last year	$1,825.065
By Entrance fees	70.000
By Life Subscriptions	64.000
By Yearly Subscriptions	562.000
By Sale of Transactions	837.060
By Interest at Bank	60.570
	$3,418.695

M. N. Wyckoff, Hon. Treasurer.

Audited and found correct.

W. Jno. White, } Auditors.
Richard J. Kirby, }

Mr. Droppers spoke regarding the item allowed for translation work, and hoped such payments would in future be sanctioned by the Council according to some fixed rule or principle. It seemed to him that abuses might result from the present system. Professor Milne, Dr. Divers, and Professor Liscomb also spoke as to the same matter.

The following officers were elected for the ensuing year:—

PRESIDENT—B. H. Chamberlain, Esq.

VICE-PRESIDENTS—Rev. G. W. Knox, D.D.; James Troup, Esq.

CORRESPONDING SECRETARY—Rev. Clay McCauley.

RECORDING SECRETARIES—A. Tison, Esq.; J. K. Goodrich, Esq.

TREASURER—M. N. Wyckoff, Esq.

LIBRARIAN—Rev. W. J. White.

COUNCILLORS:

Dr. L. Divers	R. Masujima, Esq.
Rev. Dr. D. C. Greene,	J. Milne, Esq.
Rev. W. I. Lawrance.	W. J. S. Shand, Esq.
J. H. Longford, Esq.	Dr. H. Weipert.
Rev. T. M. McNair.	J. H. Wigmore, Esq.

Professor Dixon read a note on the manufacture of Cloisonne.

Thereafter a paper was read by Professor DIXON, entitled "Japanese Swords,"

Mr. DIXON displayed various illustrations of famous swords, showing one that he had himself seen made by a famous living smith. Mr. Inawo, of the Household Department, was then introduced to the meeting, and showed several fine swords in his collection, particularly a Masamune. A retainer of Viscount Akimoto's was also present with a Kanehira blade and several others. These were inspected with great interest by members, and various questions were asked. A vote of thanks was then passed to Mr. Inawo and the reader of the paper.

The meeting then adjourned.

LIST OF MEMBERS.

Honorary Members.

Alcock, Sir Rutherford, K.C.B., Athenæum Club, London, England

Arnold, C.S.I.N., Sir Edwin, c/o Daily Telegraph Office, London, England.

Arthur, Rear-Admiral W., c/o Messrs. Hallett & Co., Trafalgar Square, London, England.

Aston, C.M.G., W. G., Woodlands, Seaton, Devon, England.

Day, Prof. Geo. E., Yale College, New Haven, Conn., U. S. A.

Edkins, D.D., Rev. Joseph, Shanghai.

Franks, A. W., c/o Kegan, Paul, Trench, Trübner & Co., Ludgate Hill, London, E. C., England.

Hepburn, M.D., LL.D., J. C., Pasadena, Cal., U. S. A.

Norkenskjöld, Baron A., Stockholm.

Rein, Prof. J. J., Bonn-am-Rhein, Germany.

Satow, C.M.G., Ernest M., British Legation, Montevideo.

Wade, K.C.B., Sir Thomas F., Cambridge, England.

Whitney, Prof. W. D., New Haven, Conn., U. S. A.

Life Members.

Anderson, F.R.C.S., W., 2 Harley Street, Cavendish Square, London, W., England.

Atkinson, B.SC., R. W., Cardiff, Wales.

Bisset, F.L.S., J., 72, Yokohama.

Blanchet, Rev. C. T., Bolton, Lake George, New York.

Brauns, Prof. Dr. D., Halle University, Germany.

Brown, Captain A. R., Central Chambers, 109 Hope Street, Glasgow, Scotland

Carson, T. G., Bannfield, Coleraine, Ireland.

Clarke-Thornhill, T. B., Ruston Hall, Kettering, Northamptonshire, England.

Clement, E. W., 5,461, Washington Ave., Chicago, Ill., U. S. A.

Cooper, LL.D., C. J., Hampton Lodge, Stourton near Stour Bridge, Staffordshire, England.

Deas, F. W., 12 Magdala Place, Edinburgh.

Dillon, E., 13 Upper Phillimore Gardens, Kensington, London, S. W., England.

Dixon, F.R.S.E., J. M., Washington University, St. Louis, Mo., U.S.A.

Dixon, M.A., Rev. William Gray, Warrnambool, Victoria, Australia.

Eaves, Rev. Geo., Poste Restante, Denver, Colorado, U. S. A.

Fearing, D., Newport, Rhode Island, U. S. A.

Flemmich, O. C., Alton House, Roehampton, England.

Flowers, Marcus, National Union Club, Albemarle Street, London, W., England.

Gowland, W., c/o F. Dillon, Esq., 13 Upper Phillimore Gardens, Kensington, London, S.W., England.

Gribble, Henry, 134 Pearl Street, New York.

Hall, Frank, Elmira, Chemung Co., New York.

Holme, F.L.S., C., The Red House, Bixley Heath, Kent, England.

Kinch, Edward, Agricultural College, Cirencester, England.

Knott, D.SC., F.R.S.E., Cargill G., Royal Society, Edinburgh.

Liberty, Lasenby, 13 Cornwall Terrace, Regent's Park, London, England.

Low, C. W., Powis Lodge, Vicarage Park, Plumsted, London.

Lyman, Benjamin Smith, State Geological Survey Office, Philadelphia, Pa., U. S. A.

Maclagan, Robert, 9 Cadogan Place, Belgrave Square, London, England.

Malan, Rev. C. S., West Cliff Hall, Bournemouth, England.

Marshall, D.D., T., 48 McCormick Block, Chicago, Ill., U. S. A.

Marshal, Prof., Queen's College, Kingston, Canada.

Morse, W. H., c/o Messrs. Smith, Baker & Co., 78 Yokohama.

Napier, H. M., Glasgow, Scotland.

Olcott, Colonel Henry S., Adyar, Madras, India.

O'Neill, John, Trafalgar House, Faversham, Kent, England.

Parker, E. H., c/o Postmaster General, Rangoon.

Piggott, F. T., 36 Eaton Terrace, London, S. W., England.

Robertson, M.D., Argyll, 14 Charlotte Square, London, England.

Satow, F. A., 6 Queensborough Terrace, Hyde Park, London, W. England.

Stephenson, Dr. J. B., 76 Bartlett st. Roxbury, Boston, U. S. A.

Todd, C. J., H. B. M. S. "Mercury."

Tompkinson, M., Franche Hall, near Kidderminster, England.

Trower, H. Seymour, 51 Montagu Square, London, W., England.

ORDINARY MEMBERS.

Akimoto, Viscount, Surugadai, Tōkyō.
Amerman, D.D., Rev. James L., Spring Valley, New York, U. S. A.
Andrews, Rev. Walter, Hakodate.
Arrivet, J. B., Koishikawa, Kanatomi-chō, Tōkyō.
Baelz, M.D., E., 12 Kaga Yashiki, Hongō, Tōkyō.
Baker, Colgate, Kobe.
Batchelor, Rev. J., c/o Rev. Walter Andrews, Hakodate.
Bickersteth, Right Reverend Bishop, 11 Sakae-chō, Shiba, Tōkyō.
Bigelow, Dr. W. S., Boston, Mass., U. S. A.
Booth, Rev. E. S., 178 Bluff, Yokohama.
Brandram, Rev. J. B., Kumamoto.
Brinkley, R.A., Capt. F., 7 Nagata-chō, Nichōme, Tōkyō.
Brown, Matthew, 6 Yokohama.
Burton, W. K., 9 Kaga Yashiki, Hongō, Tōkyō.
Center, Alex., 4-A Yokohama.
Chamberlain, B. H., 19 Daimachi, Akasaka, Tōkyō.
Cochran, D.D., Rev. G., 16 Toriizaka, Azabu, Tōkyō.
Cocking, S., 55 Yokohama.
Conder, J., 13 Nishi-konya-cho, Kyōbashi, Tōkyō.
Coudenhove, Count Henry, Austrian Legation, Tōkyō.
Cruickshank, W. J., 35 Yokohama.
Dautremer, J., French Legation, Tōkyō.
Deakin, L. H., 20 Yokohama.
De Bunsen, M., British Legation, Tōkyō.
De Forest, D.D., Rev. J. H., Sendai.
Dietz, F., 70 Yokohama.
Divers, M.D., F.R.S., Edward, Imperial University, Tōkyō.
Droppers, Garrett, 41 Shinzaka-machi, Akasaka, Tōkyō.
Du Bois, M.D., Francis, 48 Tsukiji, Tōkyō.
Duer, Y., Nippon Yusen Kaisha Head Office, Tōkyō.
Dumelin, A., Swiss Consul-General, 90-A Yokohama.
Eby, D.D., Rev. C. S., 16 Tatsuoka-chō, Hongō, Tōkyō.
Enslie, J. J., British Consulate, Kōbe.
Fardel, C. L., Victoria School, Yokohama.
Favre-Brandt, J., 145 Bluff, Yokohama.
Francis, Rev. J. M., 25 Tsukiji, Tōkyō.
Fraser, J. A., 143, Yokohama.
Fraser, Hugh, British Legation, Tōkyō.
Gardiner, J. McD., 40 Tsukiji, Tōkyō.
Gay, A. O., 2 Yokohama.

Giussani, C., 90-B Yokohama.
Glover, T. B., 53 Kōenchi, Shiba, Tōkyō.
Goodrich, J. K., 2 Yokohama.
Green, Rev. C. W., Glen Moore, Pa., U. S. A.
Greene, D.D., D. C., 24 Nakanochō, Ichigaya, Tōkyō.
Griffis, Rev. W. E., 638 Tremont Street, Boston, Mass., U. S. A.
Griffiths, E. A., British Legation, Tōkyō.
Groom, A. H., 35 Yokohama.
Gubbins, J. H., British Legation, Tōkyō.
Hall, J. C., British Consulate, Hakodate.
Hampden, E. M. Hobart, British Legation, Tōkyō.
Hannen, Judge N. J., British Consulate, Shanghai.
Hardie, Rev. A., Ottawa, Canada.
Hattori, Ichizo, Educational Department, Tōkyō.
Hellyer, T. W., 210 Yokohama.
Hinton, C. H., Kanazawa, Kaga.
Hunt, H. J., 62 Concession, Kobe.
Irwin, R. W., 5 Kiridōshi, Sakae-chō, Shiba, Tōkyō.
Isawa, S., 50 Dairokuten-chō, Koishikawa, Tōkyō.
James, F. S., 142 Yokohama.
Jamieson, G., c/o Henry S. King and Co., Cornhill, London, England.
Jaudon, Peyton, 3 Aoi-chō, Akasaka, Tōkyō.
Kanda, Naibu, Imperial University, Tōkyō.
Kanō, J., Kōtō Chūgakkō, Kumamoto.
Keil, O., 61 Yokohama.
Kenny, W. J., British Consulate, Yokohama.
King, Rev. A. F., 11 Sakae-chō, Shiba, Tōkyō.
Kirby, J. R., 8 Tsukiji, Tōkyō.
Kirkwood, M., 43 Shinzaka-machi, Akasaka, Tōkyō.
Knox, D.D., G. W., 27 Tsukiji, Tōkyō.
Kobayashi, Beika, 12 Yokohama.
Lambert, E. B., Dōshisha, Kyōtō.
Lawrance, W. I., 19 Tsukiji, Tōkyō.
Lay, A. H., British Consulate, Kobe.
Layard, R. de B., British Consulate, Yokohama.
Liscomb, W. S., 41 Shinzaka-machi, Akasaka, Tōkyō.
Lönholm, Dr. J., 8 Kaga Yashiki, Hongō, Tōkyō.
Longford, J. H., British Legation, Tōkyō.
Lowder, J. F., 28 Yokohama.
Lowell, Percival, 40 Water St., Boston, Mass., U. S. A.
MacCauley, Rev. Clay, Keiōgijuku, Mita, Tōkyō.
Macdonald, M.D., Rev. D., 4 Tsukiji, Tōkyō.
Macnab, A. J., 42 Imai-chō, Azabu, Tōkyō.

MacNair, Rev. T. M., Meiji-gakuin, Shirokane, Tōkyō.
Mason, W. B., 41 Kōenchi, Shiba, Tōkyō.
Masujima, R., 21 Hiyoshi-chō, Kyōbashi, Tōkyō.
Mayet, P., 3 Aoi-cho, Akasaka, Tōkyō.
McCauley, Rev. James M., Meiji-gakuin, Shirokane, Tōkyō.
McCartee, M.D., D. B., 7 Tsukiji, Tōkyō.
McKim, J., 7 Concession, Osaka.
Meriwether, C., 857 N. Howard St., Baltimore, Md., U. S. A.
Miller, Rev. E. Rothesay, c/o M. N. Wyckoff, Tōkyō
Milne, F.G.S., F. R. S., John, 14 Kaga Yashiki, Hongō, Tōkyō.
Münter, Capt., 3 Aoi-cho, Akasaka, Tōkyō.
Münzinger, Rev. K., 39 Kami Tomizaka, Tōkyō.
Norman, F. J., Hongō, Tōkyō.
Newton, J. C. C., Kobe.
Palmer, R.E., Maj.-Gen. H. S., 41 Imai-chō, Azabu, Tōkyō.
Parlett, H., British Legation, Tōkyō.
Patton, J. L., 18 Tsukiji, Tōkyō.
Perin, G. L., 15 Masago-cho, Hongō, Tōkyō.
Quin, J. J., British Consulate, Nagasaki.
Rentiers, J. B., British Legation, Tōkyō.
Riess, Dr. Ludwig, Tōkyō.
Schurr, G. J. H., 18 Nagata-chō, Ni-chōme, Tōkyō.
Scriba, M.D., J., 13 Kaga Yashiki, Hongō, Tōkyō.
Seymour, B.A., M.D., J. N., 32 Tsukiji, Tōkyō.
Shand, W. J. S., 4-B, Yokohama.
Shaw, Ven. Archdeacon, 13 Iigura, Roku-chōme, Tōkyō.
Smith, Rev. G. T., 152 Higashi-katamachi, Komagome, Hongō, Tōkyō.
Soper, Rev. Julius, Hakodate
Spencer, Rev. J. O., Aoyama, Tōkyō.
Spinner, W., 12 Suzukicho, Surugadai, Tōkyō.
Stone, W. H., 3 Aoi-chō, Akasaka, Tōkyō.
Swift, J. S., 85 Myogadani, Tōkyō.
Taft, G. W., Tsukiji, Tōkyō.
Takaki, Dr., 10 Nishi-konya-chō, Kyōbashi, Tōkyō.
Thomas, T., 50-B Yokohama.
Thompson, A. W., 18 Tsukiji, Tōkyō.
Thompson, Lady Mary, Cliff End House, Scarborough, England.
Tison, A.M., LL.B., A., Kaga Yashiki, Hongō, Tōkyō.
Trevithick, F. H., Shimbashi Station, Tōkyō.
Troup, James, British Consulate, Yokohama.
Tsuda, Sen, Shimbori, Azabu, Tōkyō.

Tyng, T. S., 29 Tsukiji, Tōkyō.
Vail, Rev. Milton S., Minami-machi, Aoyama, Tōkyō.
Van de Polder, L., Dutch Legation, Tōkyō.
Van der Heyden, M.D., W., General Hospital, Yokohama.
Vassilliel, T., Imperial Russian Legation, Tōkyō.
Waddell, Rev. Hugh, 6 Tsukiji, Tōkyō.
Walford, A. B,, 10 Yokohama.
Walsh, T., Kobe.
Walter, W. B., 1 Yokohama.
Warren, Rev. C. F., Osaka.
Weipert, Dr. H., German Legation, Tōkyō.
White, Rev. W. J., 6 Tsukiji, Tōkyō.
Whitney, M.D., Willis Norton, U. S. Legation, Yenokizaka, Akasaka, Tōkyō.
Whittington, Rev. Robert, Azabu, Tōkyō.
Wigmore, J. H., Cambridge, Mass., U. S. A.
Wileman, A. E., British Legation, Tōkyō.
Wilson, J. A., Hakodate.
Winstanley, A., 50 Yokohama.
Wyckoff, M. N., c/o Meiji-gakuin, Shirokane, Tōkyō.
Yatabe, B.SC., R. Fujimi-chō, Kōjimachi, Tōkyō.

THE

CONSTITUTION AND BY-LAWS

OF THE

ASIATIC SOCIETY OF JAPAN.

Revised June, 1891.

THE CONSTITUTION OF THE ASIATIC SOCIETY OF JAPAN.

Revised June, 1891.

NAME AND OBJECTS.

Art. I. The Name of the Society shall be THE ASIATIC SOCIETY OF JAPAN.

Art. II. The Object of the Society shall be to collect and publish information on subjects relating to Japan and other Asiatic Countries.

Art. III. Communications on other subjects may, within the discretion of the Council, be received by the Society but shall not be published among the Papers forming the Transactions.

MEMBERSHIP.

Art. IV. The Society shall consist of Honorary and Ordinary Members.

Art. V. Honorary Members shall be admitted upon special grounds, to be determined in each case by the Council. They shall not be resident in Japan, and shall not pay an entrance fee or annual subscription.

Art. VI. Ordinary Members shall pay, on their election, an entrance fee of Five Dollars and the subscription for the current year. Those resident in Japan shall pay an annual subscription of Five Dollars. Those not resident in Japan shall pay an annual subscription of Three Dollars or a Life Composition of Sixteen Dollars.

Any Member elected after 30th June shall not be required to pay the subscription for the year of his election unless he wishes to receive the Transactions of the past session of the Society.

Any person joining the Society can become a Life Member by the payment of Fifty Dollars; or any person already a member can become a Life Member by

the payment of Fifty Dollars, less Two Dollars and Fifty Cents for each year in which he has been an Ordinary Member.

Art. VII. The Annual Subscription shall be payable in advance, on the 1st of January in each year.

Any Member failing to pay his subscription for the current year by the 30th of June shall be reminded of his omission by the Treasurer. If his subscription still remains unpaid on the 31st of December of that year, he shall be considered to have resigned his Membership.

Art. VIII. Every Member shall be entitled to receive the Publications of the Society during the period of his Membership.

OFFICERS.

Art. IX. The Officers of the Society shall be:—

A President.
Two Vice-Presidents.
A Corresponding Secretary.
Two Recording Secretaries.
A Treasurer.
A Librarian.

COUNCIL.

Art. X. The affairs of the Society shall be managed by a Council composed of the Officers for the current year and ten ordinary Members.

MEETINGS.

Art. XI. General Meetings of the Society and Meetings of Council shall be held as the Council shall have appointed and announced.

Art. XII. The Annual Meeting of the Society shall be held in June, at which the Council shall present its Annual Report and the Treasurer's Statement of Accounts, duly audited by two Members nominated by the President.

Art. XIII. Nine Members shall form a quorum at an Annual Meeting, and Five Members at a Council Meeting. At all Meetings of the Society and Council, in the absence

of the President and Vice-Presidents, a Chairman shall be elected by the Meeting. The Chairman shall not have a vote unless there is an equality of votes.

Art. XIV. Visitors (including representatives of the Press) may be admitted to the General Meetings by Members of the Society, but shall not be permitted to address the Meeting except by invitation of the Chairman.

ELECTIONS.

Art. XV. All Members of the Society shall be elected by the Council. They shall be proposed at one Meeting of Council and balloted for the next, one black ball in five to exclude; and their Election shall be announced at the General Meeting following.

Art. XVI. The Officers and other Members of Council shall be elected by ballot at the Annual Meeting, and shall hold office for one year.

Art. XVII. The Council shall fill up all Vacancies in its Membership which may occur between Annual Meetings.

PUBLICATION.

Art. XVIII. The published Transactions of the Society shall contain:—

(1) Such papers and notes read before the Society as the Council shall have selected, and an abstract of the discussion thereon;

(2) The Minutes of the General Meetings;

(3) And, at the end of each annual volume, the Reports and Accounts presented to the last Annual Meeting, the Constitution and By-Laws of the Society, and a List of Members.

Art. XIX. Twenty-five separate copies of each published paper shall be placed at the disposal of the author, and the same number shall be reserved by the Council to be disposed of as it sees fit.

Art. XX. The Council shall have power to distribute copies of the Transactions at its discretion

Art. XXI. The Council shall have power to publish, in separate form, papers or documents which it considers of sufficient interest or importance.

Art. XXII. Papers accepted by the Council shall become the property of the Society and cannot be published anywhere without consent of the Council.

Acceptance of a paper for reading at a General Meeting of the Society does not bind the Society to its publication afterwards. But when the Council has decided not to publish any paper accepted for reading, that paper shall be restored to the author without any restriction as to its further use.

MAKING OF BY-LAWS.

Art. XXIII. The Council shall have power to make and amend By-Laws for its own and the Society's guidance, provided that these are not inconsistent with the Constitution; and a General Meeting by a majority vote may suspend the operation of any By-Law.

AMENDMENTS.

Art. XXIV. None of the foregoing Articles of the Constitution can be amended except at a General Meeting by a vote of two-thirds of the Members present, and only if due notice of the proposed Amendment shall have been given at a previous General Meeting.

BY-LAWS.

GENERAL MEETINGS.

Art. I. The Session of the Society shall extend over the nine months from October to June inclusive.

Art. II. Ordinarily the Session shall consist of nine monthly General Meetings; but it may include a less or greater number when the Council finds reason for such a change.

Art. III. The place and time of Meeting shall be fixed by the Council, preference being given, when the Meeting is held in Tōkyō, to 4 p.m. on the Second Wednesday of each month. The place of Meeting may be in Yokohama when the occasion is favourable.

Art. IV. Timely notice of every General Meeting shall be sent by post to the address of every Member resident in Tōkyō or Yokohama.

ORDER OF BUSINESS AT GENERAL MEETINGS.

Art. V. The Order of Business at General Meetings shall be:—

(1) Action on the Minutes of the last Meeting;

(2) Communications from the Council;

(3) Miscellaneous Business;

(4) The Reading and Discussion of papers.

The above order shall be observed except when the Chairman shall rule otherwise.

At Annual Meetings the Order of Business shall include, in addition to the foregoing matters:—

(5) The Reading of the Council's Annual Report and Treasurer's account, and submission of these for the action of the Meeting upon them;

(6) The Election of Officers and Council as directed by Article XVI. of the Constitution.

MEETINGS OF COUNCIL.

VI. The Council shall appoint its own Meetings, preference as to time being given to 4 p.m. on the First Wednesday of each month.

VII. Timely notice of every Council Meeting shall be sent by post to the address of every Member of Council, and shall contain a statement of any extraordinary business to be done.

ORDER OF BUSINESS AT COUNCIL MEETINGS.

VIII. The Order of Business at Council Meetings shall be:—

(1) Action upon the Minutes of the last Meeting;

(2) *Reports* of the Corresponding Secretary,
of the Publication Committee,
of the Treasurer,
of the Librarian,
and of Special Committees;

(3) The Election of Members;

(4) The Nomination of Candidates for Membership of the Society;

(5) Miscellaneous Business;

(6) Acceptance of papers to be read before the Society;

(7) Arrangement of the Business of the next General Meeting.

PUBLICATION COMMITTEE.

IX. There shall be a Standing Commitee entitled the Publication Committee and composed of the Secretaries, the Librarian, and any Members appointed by the Council. It shall ordinarily be presided over by the Corresponding Secretary.

It shall carry through the publication of the Transactions of the Society, and the re-issue of Parts out of print.

It shall report periodically to the Council and act under its authority.

It shall audit the accounts for printing the Transactions.

It shall not allow authors' manuscripts or printer's proofs of these to go out of its custody for other than the Society's purposes.

DUTIES OF CORRESPONDING SECRETARY.

X. The Corresponding Secretary shall:—

1. Conduct the Correspondence of the Society;
2. Arrange for and issue notices of Council Meetings, and provide that all official business be brought duly and in order before each Meeting;
3. Attend every Council Meeting and General Meeting or give notice to the Recording Secretary that he will be absent;
4. Notify new Officers and Members of Council of their appointment and send them each a copy of the By-Laws;
5. Notify new Members of the Society of their election, and send them copies of the Articles of Constitution and of the Library Catalogue;
6. Unite with the Recording Secretaries, Treasurer and Librarian in drafting the Annual Report of the Council and in preparing for publication all matter as defined in Article XVIII. of the Constitution.
7. Act as Chairman of the Publication Committee, and take first charge of authors' manuscripts and proofs struck off for use at Meetings.

RECORDING SECRETARIES.

XI. Of the Recording Secretaries, one shall reside in Tōkyō, and one in Yokohama, each having ordinarily duties only in connection with Meetings of the Society or its Council held in the place where he resides.

DUTIES OF RECORDING SECRETARY.

XII. The Recording Secretary shall:—

1. Keep Minutes of General and Council Meetings;
2. Make arrangements for General Meetings as instructed by the Council, and notify Members resident in Tōkyō and Yokohama;
3. Inform the Corresponding Secretary and Treasurer of the election of new Members.
4. Attend every General Meeting and Meeting of Council, or, in case of absence, depute the Corresponding Secretary or some other Member of Council to perform his duties, and forward to him the Minute Book;
5. Act for the Corresponding Secretary in the latter's absence;
6. Act on the Publication Committee;
7. Assist in drafting the Annual Report of the Council and in preparing for publication the Minutes of General Meetings and the Constitution and By-laws of the Society;
8. Furnish abstracts of Proceedings at General Meetings to newspapers and public prints as directed by the Council.

DUTIES OF TREASURER.

XIII. The Treasurer shall:—

1. Take charge of the Society's Funds in accordance with the instructions of the Council;
2. Apply to the President to appoint Auditors, and present the Annual Balance sheet to the Council duly audited before the date of the Annual Meeting;
3. Attend every Council Meeting and report when requested upon the money affairs of the Society, or in case of absence depute some Member of Council to act for him, furnishing him with such information and documents as may be necessary;
4. Notify new Members of the amount of entrance fee and subscriptions then due;

5. Collect subscriptions and notify Members of their unpaid subscriptions once in or about January and again in or about June; apply to Agents for the sale of the Society's Transactions in Japan and abroad for payment of sums owing to the Society;
6. Pay out all Monies for the Society under the direction of the Council, making no single payment in excess of Ten Dollars without special vote of the Council.
7. Inform the Librarian when a new Member has paid his entrance fee and first subscription;
8. Submit to the Council at its January Meeting the names of Members who have not paid their subscription for the past year; and, after action has been taken by the Council, furnish the Librarian with the names of any Members to whom the sending of the Transactions is to be suspended or stopped.
9. Prepare for publication the List of Members of the Society.

DUTIES OF LIBRARIAN.

XIV. The Librarian shall:—

1. Take charge of the Society's Library and stock of Transactions, keep its books and periodicals in order, catalogue all additions to the Library, and superintend the binding and preservation of the books;
2. Carry out the Regulations of the Council for the use and lending of the Society's books;
3. Send Copies of the Transactions to all Honorary Members, to all Ordinary Members not in arrears for dues according to the list furnished by the Treasurer, and to all Societies and Journals the names of which are on the list of Exchanges;
4. Arrange with Booksellers and others for the sale of the Transactions as directed by the Council, send the required numbers of each issue to the appointed agents, and keep a record of all such business;
5. Arrange, under direction of the Council, new Exchanges of the Transactions with Societies and Journals;
6. Draw up List of Exchanges of Journals and of additions to the Library for insertion in the Council's Annual Report;

7. Make additions to the Library as instructed by the Council;
8. Present to the Council at its June Meeting a statement of the stock of Transactions possessed by the Society;
9. Act on the Publication Committee;
10. Attend every Council Meeting and report on Library matters, or, if absent, send to the Corresponding Secretary a statement of any matter of immediate importance.

LIBRARY AND MEETING ROOM.

Art. XV. The Society's Rooms and Library shall be at No. 17 Tsukiji, Tōkyō, to which may be addressed all letters and parcels not sent to the private address of the Corresponding Secretary, Treasurer, or Librarian.

Art. XVI. The Library shall be open to Members for consultation during the day, the keys of the book cases being in the possession of the Librarian or other Member of Council resident in the neighbourhood; and books may be borrowed on applying to the Librarian.

SALE OF TRANSACTIONS.

Art. XVII. A Member may obtain at half-price one copy for his own use of any Part of the Transactions issued prior to the date of his Membership.

Art. XVIII. The Transactions shall be on sale by Agents approved of by the Council and shall be supplied to these Agents at a discount price fixed by the Council.

MATERIALS FOR THE STUDY

OF

PRIVATE LAW IN OLD JAPAN.

EDITED, WITH NOTES AND AN INTRODUCTION,

BY

JOHN HENRY WIGMORE.

PUBLISHED BY

THE ASIATIC SOCIETY OF JAPAN,

TŌKYŌ.

DECEMBER, 1892.

MATERIALS FOR THE STUDY OF PRIVATE LAW IN OLD JAPAN.

PART I.—INTRODUCTION.

PART II.—CONTRACT: CIVIL CUSTOMS.

PART III.—CONTRACT: LEGAL PRECEDENTS.

SECTION I: MONEY LOANS; LETTING AND HIRING.

SECTION II: SALE.
(*In preparation.*)

SECTION III: DEPOSIT, PLEDGE.
(*In preparation.*)

PART IV.—CONTRACT: COMMERCIAL CUSTOMS.
(*In preparation.*)

PART V.—PROPERTY: CIVIL CUSTOMS.

PART VI.—PROPERTY: LEGAL PRECEDENTS.
(*In preparation.*)

PART VII.—PERSONS: CIVIL CUSTOMS.
(*In preparation.*)

PART VIII.—PERSONS: LEGAL PRECEDENTS.
(*In preparation.*)

MATERIALS FOR THE STUDY

OF

PRIVATE LAW IN OLD JAPAN.

PART I.

INTRODUCTION.

Curtis.

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ERRATA.

Page 26, line 2, for "first", read "fifth".
" 26, " 6, " "8", read "9".
" 64, " 29, " "utentels", read "utensils".
" 72, " 2 from bottom, for "entirety, but", read "entirety. But".
" 115, line 5 from bottom, for "former", read "first".
" 117, " 15, for "35", read "350".
" 119, lines 5–16, for "village", in line 9, read "villages", and read the figures as follows:

"*a*) One-third by the feudal lord	8110
b) One-third by the residents of the castle-town (Sendai)	8110
Of the remaining third:	
c) One-third by the residents of the villages in Kokubun	2703
Of the remainder (5407):	
d) Public labor by the residents of demesne lands	2336
e) Public labor by the residents of stipendiary lands	2170
f) Irrigation labor	901
	24330"

" 131, line 3, for "master," read "master's."
" 171, " 13, " "Kanda," read "Nihonbashi."
" v, App., line 3, for "Its", read "The".

Comparative legal science teaches us how nations having a common origin may develop independently their original inheritance of legal ideas, * * and, on the other hand, how the legal systems of nations having no association in history may advance along common lines of development. * * * Investigations carried on in the region of a single system serve to smooth the path for the advent of comparative legal science. Each enlargement of our view, each addition to our available material, is a gain of the greatest moment for that science.

BERNHÖFT, in *Zeitschr. f. vergleich. Rechtswiss.*, 1878.

I.

REPORT

BY THE EDITOR

TO THE COUNCIL OF

THE ASIATIC SOCIETY OF JAPAN.

Tokyo, November, 1892.

To the Council of the Asiatic Society of Japan:

It is now nearly two years since you passed a vote appropriating a sum of money to aid in the translation of certain original materials bearing on the study of private law under the Tokugawa Shogunate. As was natural with a subsidized infant industry, the progress of the work thus authorized was at first slow and tentative, but in the present year it has been more rapid and more fruitful, and the close of the summer sees four volumes (including the present one) ready and issuing from the printer's hands, with the prospect of the remainder being ready in the near future. It has become my duty to render to the Asiatic Society, through yourselves, some account of the nature of the material thus made public by means of your assistance and of the methods employed in the translation and edition.

When I first came to Japan, three years ago, I was anticipating with professional interest the opportunity of making some acquaintance with the law of Japan,—not the newly imported Codes, fresh from foreign workshops, but the indigenous law, the law of the people, representing the sum of the ideas of justice which had grown up amid this unique civilization of the East. If it is indeed a civilization in the fullest sense—and who that has lived here can doubt it?—there must have been produced, one argues, certain ideas of legal right and obligation, certain notions of justice between man and man, which could hardly fail, in a nation where literature stood as high in favor, to be preserved in writing. My expectations were almost completely disappointed. There already existed in a foreign tongue, it is true, more or less material of two sorts,—ancient laws and criminal laws. Mr. Tarring's translation of the land provisions of the old Taiho (701–703) code[1]; Mr. Longford's translation of the old penal codes revamped by the new Government in 1871–2[2]; Dr. Michaelis' essay on Japanese criminal law (dealing chiefly with the ancient law);[3] an essay or two on adoption and marriage; and three translations of the document, half political, half legal, known as the Hundred Laws of Iyeyasu;—these, I believe, with a single exception, summarize the whole of the purely legal material then brought to light. That exception was the work of Herr Otto Rudorff, who, in his "Legal Administration under the Tokugawa"[4] and "Collection of Tokugawa Laws,"[5]

1. Trans. Asiat. Soc. Jap., VIII, 2. 2. Ib., V, 2. 3. Mittheil. d. D. Gesells. Ostasiens, Heft 38. 4. Ib., Heft 38. 5. Supplement-Heft, following No. 40; published April, 1889. But since the time above referred to has appeared Dr. H. Weipert's scholarly essay on "Japanese Family and Succession Law," (Mittheil. d. D. Gesells. Ostasiens, Heft 41). It is founded on the best sources and leaves nothing to be desired in its treatment of that subject.

published the first systematic essay and the first considerable body of original material dealing with the civil law of the Tokugawa epoch,—the epoch representing the best fruits of Japanese national development. To the material of that essay there is little to be added except in the way of detail. But the "Collection of Tokugawa Laws" is for two reasons to be regarded as only a beginning. In the first place, a large part of it deals with purely criminal law, and this is perhaps the least interesting of the material to be sought. The criminal law represents largely the notions of political expediency held by the ruling class, not the notions of justice between man and man, of civil rights and obligations, which form the bulk of a national jurisprudence. It offers the least opportunity for systematic and detailed development by judges and commentators. The people struggle against it and endeavor to evade it, instead, as in the civil law, of making it,—that is, of furnishing in their usages the material for it and of embodying in it the sum of all the practices sanctioned by the family life and commercial life of the nation. For this reason, too, it persists less and is more liable to change with a change of government. Finally, it is least profitable in a comparison of the systems of jurisprudence of other countries and other ages. How many individuals to-day care about the Roman criminal law, for the hundreds and thousands who study the Roman civil law? In proportion as a higher degree of commercial and social development is reached, the body of rules representing the reciprocal rights and obligations of men (whether penalties are attached or not, and whether they are known as civil laws or not) increases vastly in proportion to the body of purely penal law. It is for this reason that we cannot feel satisfied until we have attained a knowledge of the civil or private law of old Japan,—that is, of the Japanese nation as it was before the surrender to Occidental influences in the seventies. We shall then have

found the kernel of the legal system, whatever it may have been.

The second reason why we must wish for more than Herr Rudorff's "Collection" contains is that its material is almost purely statutory. It is true that many of the laws there cited are preceded by a paragraph reciting the "former custom." But this, it will easily be seen, means usually, if not always, the former regulation or precedent obtaining in the statutes or in the Court practice, and not the popular usage. It is hardly necessary to point out that in a country so conservative and law-abiding as Japan (for it may easily be called one of the most law-abiding countries in the civilized world) the force of custom must be enormous, and that the sentiments of legal justice obtaining in family and commercial life may be taken (if we consider old Japan only) as in fact equivalent to the law on those subjects. In other words, the domain of customary law was extensive. Two somewhat peculiar facts, moreover, combine to render less fruitful the search for the records of these customs in statutory law or even in judicial decisions, much less in literature. On the one hand the strong sentiment of the people toward compromise, arbitration, private settlement—an entirely natural characteristic of the people themselves, but constantly fostered by the Government,—tended to keep the great majority of disputes out of court and diminished exceedingly the need for statutory regulation of civil rights and obligations. On the other hand, the contempt which the educated classes felt for the lower classes—the twenty or thirty millions of farmers, artisans, and merchants, who made up fifteen-sixteenths of the nation—was such that any literary record of the observances of those below them was the last thing to be expected. We may judge of the fixity of this characteristic by the fact that the original volumes which formed Parts II, IV, V, and VII of the ensuing Materials were in 1890 (as repeated

inquiries proved) unknown to one of the greatest scholars (of the old generation) of Japanese law, although one collection had been for ten years published in full by the Government, and an abstract of the other had been twelve years published and was known at the University where this estimable gentleman taught. In the study of Imperial ordinances and feudal codes he had taken a foremost part; but the customary law of the people, relating to marriage, adoption, inheritance, mortgages, tenancy, deposits, brokerage, commercial paper, and the like, was for him no part of legal science, and he had very naturally never looked for any material of the sort.

I have said that the "Collection of Tokugawa Laws" supplies us with very little material of this sort. Furthermore, it contains few judicial decisions on the innumerable topics of private right and duty. In the fifth book (*Reigaki*) alone, forming one-sixth of the volume, are found a few. Yet the material of this sort in existence is voluminous. Of the ensuing Parts dealing with Legal Precedents, one-third or more is made up of cases at the bar of the Court; and this portion is but a selected fragment of the records still buried in the archives of the Department of Justice.

In spite of all that Herr Rudorff had accomplished, it was apparent that there still remained the large mass of customary law, if it could be found anywhere recorded, and the whole body of judicial decisions, and that from these alone could we gather any connected and thorough knowledge of the Japanese legal system, whatever it was. But what Herr Rudorff could not find was certainly not to be apparent to the passer-by; and so it proved. My curiosity led me to spend more or less time in the search; but without result. Two of the best of the older scholars, who furnished plentiful references on the feudal codes and

the ancient laws, were silent on the sources I wished. Among the younger generation the search was still less hopeful. Probably the last thing that the ordinary Japanese law student thinks of is records of the legal ideas indigenous to his country. He dismisses them all, as did a well-known law lecturer of the younger generation, in a remark made last spring, as "a laughing stock," and it is impossible to stimulate an interest in them. It is to a very few scholars like Kaneko, Suzuki, Miyazaki, and Matsuzaki, that Japan must look to rescue her inheritance from the oblivion into which the mental revolution of the last two decades has plunged it. At last was given me a small black printed book of some 500 pages, as probably containing the desired material. It bore the title "Collection of Civil Customs" (*Minji Kwanrei Ruishu*), and was an abridgment of the volume which forms the original of Parts II, V, and VII of these Materials. It bore the date Meiji 10, 5th month (May, 1877); the Department of Justice was given as the publishing office, and Mr. Ikuta Sei, an official of the Department, assisted by Mr. Nagamori, a subordinate judge, as the compiler. The contents proved to be exactly what was sought,—a collection of customary law made by inquiries among the people themselves. But there were indications in the volume that the whole of the material was not there, and accordingly a visit was made to the Department of Justice, and permission requested to see the original. The compilers were no longer in their old positions, and the new generation of officials did not appear to be able to discover immediately the desired volumes. In the course of the search a number of large manuscript volumes were brought out which bore on the outer cover a title similar to that of the printed book before mentioned, *Tokugawa Jidai Minji Kwanrei Ruishu* ("Collection of Civil Customs of the Tokugawa Era"). But this title was misleading; for on the title-page appeared the words *Tokugawa Saiban Rei*

("Tokugawa Legal Precedents"), and the contents proved to be nothing less than a collection of precedents (statutes, legal decisions, memoranda, etc.), in some 10 volumes, covering the whole field of private law. This is the material which now forms Parts III, VI, and VIII of the present collection. Subsequently the original of the little printed book was found; and at the same time the "Collection of Commercial Customs" (*Shoji Kwanrei Ruishu*), from which Part IV is made.

I have reluctantly intruded these details of personal experience, because your Society has some right to know the circumstances bearing on the relation which these materials have to our existing knowledge of Japanese law; and also because the story indicates, better than any general statements could, the state of knowledge of the indigenous law by Japanese scholars, and furnishes the reason why foreigners may presume to enter paths which native scholars do not choose to tread, and may attempt the edition of a collection which merits for its elucidation all the fullness of experience and insight that only a native of the country can possess in the right degree. It was by a pure accident that this collection of legal precedents was stumbled upon—the most valuable of all these materials, the original documents emanating from the very chambers of justice of the old era, the direct records furnished by the judges and litigants themselves. So little attention have they received that it may be doubted whether, outside the officials of the Department

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1. I had not gone to the Department before, because, though none can exceed in courtesy the officials of the Department, red tape makes access to the shelves impossible and it was necessary to know beforehand exactly the material desired, and because the negative replies of certain learned officials, and above all the positive assurances of the leading authority on the law of Old Japan, whom I had consulted especially for bibliographical information, had taken away every inducement to seek in that quarter.

Library, any Japanese scholar has consulted this collection, except Mr. Kaneko Kentaro, Chief Secretary of the House of Peers,—who lately found and used it in preparing his admirable monograph on "The Legal System of Japan."[1] The abridged printed copy of the "Collection of Civil Customs" was at one time used to some extent in a course at the Imperial University; but it is no longer employed and I have not been able to find a second copy.[2]

The rest of this tedious story is already known to you. The materials were laid before the members of this Council, and they were asked whether they could see their way towards aiding in its translation. They responded by making an appropriation sufficient to cover a substantial part of the translation expenses, and they have already (November, 1892) published Parts II, V, and a portion of Part III. It remains to describe more particularly the original collections and the method followed in editing them.

The "Collection of Civil Customs" apparently existed in three forms,—first, the mass of reports sent in by the investigators appointed by the Department; second, a connected arrangement of these reports, re-written and sorted, in a single manuscript volume of about 1000 pages; third, the printed abridgment already spoken of. The first I have not been able to see: the second and third have been used in this edition. The undertaking clearly owed its inception to Count Oki Takato, the veteran Minister of Justice, under whose guidance were made most of the efforts of the seventies to reorganize the Japanese legal system. During that decade the work

1. An address delivered in Berne at the meeting of the Institute of International Law, September, 1892. I have been told that the Revising Committee for the Civil Code consulted the collection in reviewing the work of M. Boissonade; but I have little faith in the statement. 2. Dr. Weipert has founded his essay (on Family and Succession Law) in part on the abridged edition.

of renovation was concentrated on the organization of Courts and the preparation of Codes of Crimes and Criminal Procedure. These two Codes were ready by the end of the decade, and as that time approached, thought was taken of the Civil Code and the Commercial Code to come, and measures were sagaciously begun for bringing the new Codes into harmony with the institutions of the country. A number of Commissioners were appointed (some twenty in all), forming a Bureau under the direction of Mr. Ikuta, above-mentioned, assisted by Mr. Nagamori. This was about 1875. These commissioners were assigned to different districts, and travelled about the country, consulting the various local officials (most of whom were the headmen who had held the same position under the Shogunate), and securing such manuscript and printed records as bore on their work. The latter sort of material was slender, for much of it had been destroyed or lost in the unsettled times of the Restoration. The headmen and other worthies were usually ready to tell all they knew, though many evaded or refused the requests for information. Some three hundred are recorded as the chief purveyors of information, though doubtless many more were consulted. The results were returned to the Department, and the chief of the Bureau gave them literary form. Of the methods followed, the preface says: "There was much difficulty in collecting these customs. In many places the commissioners stayed not more than 10 days, no information being available. It was not always possible to obtain details, nor to learn whether a given custom was true of a whole region. Inferences on this subject were made in their discretion. They have attempted to record the custom as it existed at the time; but where it has been changed by a regulation of the present Government, this has been noticed. On the whole the reports represent the old customs of the Shogunate as

they continued unchanged in the early part of the present regime. The customs vary greatly. Wherever the same custom prevails in neighboring places we have recorded it only once, taking that region where it is preserved in most detail. The whole country was not covered. Only two districts of the Hokkaido were visited,[1] and the Loo Choo Islands were not taken at all. In general those localities were most sought where the population was greatest and hence the customs were more likely to be stable and definite." The task (perhaps it is ungrateful to say it) might have been better done, so far as concerns the localizing of the customs. Each chapter, as will be seen, begins with a general statement, and detailed variations follow. It is to be presumed that where nothing is said under the head of a given district, the customs are to be taken as answering to the previous general statement. But the latter is usually very summary and incomplete; and the constant characteristic is that on a point which is for one district fully explained there is in the other paragraphs no record one way or another.

After the compression of these reports into the single manuscript volume, there was evidently another redaction when the printed abridgment was prepared. First, the chapters were subdivided into a larger number of sections, and topics were differentiated. Long paragraphs were in the same way subdivided into shorter ones and rearranged. Second, some new material was inserted, but no considerable amount. Third, about one-half of the material, perhaps more, was omitted,—on what plan it is impossible to discover, for no rule appears to have been followed. Fourth, the order of provinces and districts was rearranged in a manner which the editor

1. Because the larger part was until recently occupied by Ainos only.

and the translators at least cannot bring themselves to forgive; for in the manuscript volume the provinces are arranged in the well-known and traditional order [1] which the student of Japanese institutions learns as the sailor learns to box the compass, and this order was turned into an arbitrary and labyrinthine sequence. Constant comparison of the printed and manuscript copies was necessary, and this subversion of the original order made the identification of passages sometimes impossible, beside doubling the labor of preparing for the press. Last, some changes in the text were probably made by Mr. Ikuta's hand. In such cases the text of the printed copy has here been followed.

The general arrangement of the material has been preserved. The book was divided according to the modified French system, with which M. Boissonade has probably familiarized the officials, into: I. Persons, II. Property, III. Contract. The chapter-titles and subdivisions have been left as they were, except in one instance. The sectional subdivision of the printed edition has been followed, except in the few cases where that of the manuscript edition is better. In the chapter on "Sundry Rights Connected with Land" the paragraphs, as subdivided in the printed edition, were not always placed under the proper heading, and considerable transposition was necessary. These, with a few minor instances, were the only changes made in the form of the material.

The "Collection of Legal Precedents" was apparently a part of the same undertaking of Count Oki to collect material to serve in the framing of a Civil and a Commercial Code. The preface is without date, and little appears to be known of the work in the Department of Justice.

The collection, as originally planned, was to be in four parts; I. Persons, II. Personalty, III. Realty, IV. Civil

1. See Rein, "Japan," vol. I, p. 8.

Procedure, V. Criminal Law. The last part is without the plan of this series. The fourth part was not in existence when the work of translation was begun and was only recently completed. It is hoped that this part may subsequently be included in this series.

The first four parts are divided into chapters and sections as follows:

I. PERSONS.

Ch. I. Marriage.
- Sect. 1. Marriage.
- " 2. Divorce.[1]
- " 3. Second Marriage.
- " 4. Sundries.

Ch. II. Adoption.
- Sect. 1. Sons.
- " 2. Daughters.
- " 3. Divorce.[1]
- " 4. Second Adoption.
- " 5. Sundries.

Ch. III. Family Headship.
- Sect. 1. Succession to the Headship.
- " 2. Partition of the Estate.
- " 3. Sundries.

Ch. IV. Loss of Domicile.
- Sect. 1. Absconding.
- " 2. Sundries.

Ch. V. Abandonment of Children.

Ch. VI. Hiring of Services.
- Sect. 1. Hired persons.
- " 2. Sureties for hired persons.

Ch. VII. Domicile.
- Sect. 1. Entry in the Registry.
- " 2. Removal from the Registry.
- " 3. Outcasts.
- " 4. Sundries.

---

1. *Ri-yen;* the same term being used for the severance of marital and of filial relations.

II. Personalty.

Ch. I. Letting and Hiring.
- Sect. 1. Money.
- " 2. Chattels.
- " 3. Interest.
- " 4. Contracts for Yearly and Monthly Instalments.
- " 5. Joint Borrowing.
- " 6. Arrears of Judgment Instalments.
- " 7. Private Settlement.
- " 8. Sundries.

Ch. II. Sales.
- Sect. 1. Sales on Credit.
- " 2. Grain.
- " 3. Arrears.
- " 4. Undertakings.[1]
- " 5. Animals.
- " 6. Sundry chattels.
- " 7. Sundries.

Ch. III. Deposit.
- Sect. 1. Money.
- " 2. Rice.
- " 3. Sundry articles.
- " 4. Security-money.
- " 5. Sundries.

Ch. IV. Grant.
- Sect. 1. Bequest.
- " 2. Sundries.

Ch. V. Pledge and Hypothec.
- Sect. 1. Houses.
- " 2. Foreclosure,
- " 3. Temple articles.
- " 4. Sundries.

Ch. VI. Losing and Finding.
- Sect. 1. Lost things.
- " 2. Abandoned things.
- " 3. Flotsam.
- " 4. Sundries.

Ch. VII. Theft and Robbery.
- Sect. 1. Theft and robbery.
- " 2. Sundries.

III. Realty.

Ch. I. Letting and Hiring.
- Sect. 1. Buildings.
- " 2. Land.

Ch. II. Sale.
- Sect. 1. Buildings.
- " 2. Cultivated land.

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1. That is, in the same sense that the word "contractor" is used with reference to large enterprises.

Ch. III. Grant.
Sect. 1. Buildings.
" 2. Cultivated land.

Ch. IV. Pledge and Hypothec.
Sect. 1. Buildings.
" 2. Cultivated land.
" 3. Renting of Mortgaged land.

Ch. V. Uncultivated Land.
Sect. 1. Hillsides.
" 2. Meadows.

Ch. VI. Drainage and Irrigation.
Sect. 1. Drainage and Irrigation.
" 2. Sundries.

Ch. VII. Dikes.
Sect. 1. Dikes.
" 2. Reservoirs.
" 2. Sundries.

Ch. VIII. Ways.
Sect. 1. Highways.
" 2. Sundries.

Ch. IX. Bridges.

Ch. X. Sea and River.
Sect. 1. Fishing and hunting.
" 2. Sea-weed gathering.
" 3. Ports open to foreign trade.
" 4. River-banks.
" 5. Ferries.
" 6. Water-mills.

Ch. XI. Boundaries.
Sect. 1. Counties.
" 2. Villages.
" 3. Residence land.
" 4. Cultivated land.
" 5. Forest land.
" 6. Avulsion.

Ch. XII. Temples.
Sect. 1. Buddhist.
" 2. Shinto.

Ch. XIII. Post-towns and markets.
Sect. 1. Post-towns.
" 2. Markets.

Ch. XIV. Occupation.
Sect. 1. Reclamation of waste land.
" 2. Erection of new Buildings.
" 3. Sundries.

Ch. XV. Execution in Bankruptcy.

Ch. XVI. Confiscation and Forfeiture.

IV. Procedure.

Ch. I. Bringing a Suit.
Sect. 1. Indorsing the Complaint.
" 2. Parties in different jurisdictions.
Ch. II. What Claims are not Actionable.
Sect. 1. In General.
" 2. Box actions.[1]
" 3. Actions brought a second time or brought to the wrong Court.
" 4. Actions by members of a lottery-club for shares due.
" 5. Actions on instruments of grant.
" 6. Actions by relatives.
" 7. Actions where no proofs are offered.
Ch. III. Inspection of land in dispute.
Ch. IV. Trial and Judgment.
Sect. 1. Distinction between Principal and Money Actions.
" 2. Proofs.
" 3. Judgment.
" 4. New trial.
" 5. Instrument of Settlement.[2]
" 6. Sundries.
Ch. V. Costs of Suit.
Ch. VI. Actions by Temples.
Ch. VII. Representatives.[3]
Ch. VIII. Sureties.
Ch. IX. Vouchers.[4]

But let no one suppose that this table of contents may be freely used as a guide to the cases and statutes on the different topics. In the second and third parts especially,

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1. Where a complaint was dropped into the box hung for the purpose outside the Court. 2. By the parties, stating the terms of the judgment or compromise. 3. That is, those who appear for others in Court. 4. The local officials who were required to accompany the parties to Court.

cases are found grouped together which have a superficial likeness only. Under the head of Money Loans, for instance, will be found a number of cases which belong properly under the head of Succession. The above grouping is (perhaps necessarily) a rough one only. The order of the precedents, also, is a matter in which perfection was not reached. The plan of the compilers (as they state in their brief preface) was to place in each section, first, the statutes and regulations, in order of time; next, the decisions upon actions and Court memoranda. But after these groups the documents bearing no date are placed, and, as it has been possible for the Editor to fix the dates in many cases, these documents appear out of their natural order. Sometimes, too, a further subdivision by topics was made by the compilers without marking a new section. It has seemed impossible to disturb the order of the manuscript, however, except in one or two urgent cases. Where the confusion is likely to mislead, as in the first chapter of Part III in this series, a chronological list of the cases has been appended. The "Collection of Legal Precedents" and the "Collection of Civil Customs" are not divided under similar titles; but the groupings "Persons," "Contract," "Property," and "Persons," "Personalty," "Realty," correspond in the rough; and the former has been chosen as the basis of the arrangement in this series. Of the above parts of the "Collection of Legal Precedents," the first corresponds to Part VIII of this series, the second to Part III, and the third to Part VI. The fourth part may be added as Part IX, if it should be translated.

The compilation of precedents was made from the manuscript records stored away in the Department of Justice. These number some thousands of volumes (of Japanese size), and they include all possible kinds of legal precedents,—statutes, town proclamations, general instructions to judges from the Council of State, decisions

of the Supreme Tribunal, consultations between judges of that Tribunal, replies to inquiries by provincial magistrates and by the officials of feudal lords, regulations of individual Courts, answers by merchants and others to inquiries upon commercial customs, regulations of guilds, etc. These represent the Japanese legal system, it must be remembered, only so far as the Central Government of the Shogunate was actively concerned with it; the records of the Courts of the great *daimyo* still lie hidden in their provincial storehouses. The manuscript collections now in the Department of Justice are probably not the original papers, but records from the original documents by clerks or other officials of the old regime. These collections it is scarcely possible that a foreigner will be permitted to work upon, and we shall be obliged to defer further study of the sources from which the present material has been collected until something is done towards copying them in full.

The "Collection of Commercial Customs" is dated in 1883, and was a part of the same general undertaking to prepare material for Codes. It was prepared, however, under the auspices of the Cabinet; the Committee included several well-known judges and had for its President the veteran statesman Count Terajima. But the work is a much less satisfactory one than the other two. The investigation seems to have been conducted by written question and answer, and not by personal inquiry; hence a large number of the answers are mere negations or professions of ignorance. But, more than this, the questions were framed, not as in the case of the "Civil Customs," by Japanese of the old school, who had no preconceptions or technical knowledge to hinder them and who went straight forward by the paths best known to them and their informants and asked questions in a way which the latter clearly understood, but by some of the younger officials trained in modern continental

law, and full of scientific ideas and nomenclature utterly unfamiliar to the persons interrogated. In consequence the questions put were in great part incomprehensible to those who were to answer them, and even where they were understood, they could not be answered on the lines required. Imagine the answers of the average British or American man of business on being asked what he knew of Usufruct, Accession, Urban Servitudes, Opening a Succession, Solidary Obligation, Resolutory Conditions, Mandate, Sequestration, etc., etc. Then conceive the different answers if one were to ask for a description of the trade customs as to cash sales, sight bills, overdrafts, commissions, etc. Now if we take away the intellectual sprightliness of the Occidental mind, and add the strongest instincts of conservatism and tradition, we can understand how barren must have been the results when questions of the former class were propounded to the Japanese merchants. The parallel is almost exact, for the modern French terms are translated almost literally into scientific Sinico-Japanese. Thus, "usu-fruct," for example, becomes "*yo-yeki;*" "super-ficies" becomes "*chi* (land)-*jo* (above)-*ken* (right)." A good instance of the transformed legal terminology is that of *ten-sai* (calamity of Heaven,—our familiar "act of God") changed into *fuka-ko-ryoku* (unavoidable force). Those acquainted with Japanese will realize the difference between such words as *kari-nushi*, *tsuke-komi-cho*, *nakagai*, *yo-tachi-kin*, *shita-kawase-kin*,—almost purely indigenous Japanese terms—which form the current mercantile expressions, and *tampo*, *kakaku-hosho*, *saimusha*, *kenrisha*, *kogo-keisen*,—artificial Sinico-Japanese expressions, coined by the code committees, just as our electricians and biologists coin "electro-dynamic," "protoplasmic," "ptomaine," and just as meaningless to the multitude. And not merely to the multitude, but to the whole community. A student of Roman law learns with surprise that the "deposit"

about which he has studied is the "*kitaku*" which he has read of at the same time under his Code lecturer. If the commissioners for the investigation of commercial customs had gone about their work as did Mr. Ikuta and his coadjutors, and, abstaining from trying to fit the practices of the merchants into the frame of a technical legal system, had allowed the merchants to describe their customs in their own way and in their own terminology, they would have succeeded as well as Mr. Ikuta's commissioners did, and could afterwards have given their results a scientific form. As it is, the greater part of the answers are hardly worth publishing. There are many portions in which the answers are invaluable, but they are precisely those in which the merchants, when asked in intelligible language to tell all they knew upon a given subject, have described their customs in their own way. These portions have been selected for publication, and form Part IV of this series.

In the work of translation two chief principles have been followed; first, to place no Japanese term in the text unless it was absolutely unavoidable; second, to render every term as literally as possible. The former rests on general experience in making first acquaintance with Japanese books. The reader not familiar with the language is disheartened when he finds confronting him a page dotted with italics and obstructed with a dozen unpronounceable words. His memory, too, is sorely burdened with the unfamiliar terms, unless a foot-note is repeated in every instance,—a price too great for the gain. Needless to say that the original term is given, at its first occurrence, in a foot-note, wherever it has a technical use and thus needs recording for the sake of future investigators, or where the literal English term is a combination of words meaningless as a whole, or where some historical or institutional significance requires to be noted. As to literalness of rendering, no excuse is necessary. Half

the pleasure in the study of the Japanese language is the comparison between the modes of expressing the same thought in that tongue and in our own. There are many difficulties, however, in the application of this principle, especially where we have in other countries institutions or transactions similar enough to tempt one to use the familiar term at the expense of accuracy. The names of offices, for instance, present particularly knotty problems. When *daikwan* occurs, we at once think of "reeve," "bailiff," "steward," etc., and consider which one fits best. But none fit completely, and, with very few exceptions, it has seemed best in all such cases to give the most literal rendering. In the Introduction (Part I) are discussed a few cases of more than passing interest, and this will perhaps make up for the use of less suggestive terms, such as "deputy" for *daikwan*. The word "headman" has always been used for *nanushi*, *shoya*, and similar terms, the original being noted where necessary. *Kuni* and *kori*, the names for the old-time divisions of the country, have been kept wherever they occur with the title of a district; but in the text *kuni* has sometimes been rendered "province." The names of the *kori* are protean, and in many cases the standard pronunciation is difficult to learn. The Government map has been followed in cases of doubt, and the popular pronunciation has been sought. The translators engaged upon the work have been Mr. Hattori Masayasu, of the Department of Justice; Mr. Kambe Torajiro; Mr. Ogimura Kinzaburo; Mr. Tamura Iwao; and Mr. Ushiba Tetsuo. The first was introduced to me by the Librarian of the Department; the third by Mr. Suzuki Kentaro, the well-known ethnologist; and the other three gentlemen had already become known to me through translation of other materials. The work of Mr. Ushiba deserves special mention. A keen interest in the subject, an assiduous attention to detail, an excellent vocabulary, and a good knowledge of the times of these records,—these qualities

characterized his work throughout. It was originally intended that the work of translation should be solely his, but greatly to my regret his time did not permit. The bulk of Part II, Part III (Section I), and Part V is Mr. Ushiba's work.

The division of labor between translators and editor has been as follows. Each translator was instructed to make his rendering as baldly literal as possible, inserting the Japanese words (transliterated into Roman letters) wherever the term was of the slightest possible technical significance; for in order to secure uniformity of usage it was indispensable that the original terms should be before the editor. This first draft was then gone over between editor and translator, and further reference made to the the original, where necessary. The translators constantly consulted various authorities in the course of their work,—scholars like Professor Komiyama and Professor Naito, and treatises of various sorts.[1]

Their first draft was then remoulded by the editor into the form in which it now appears. The capacity of the editor as a translator is slender enough ; for he is unacquainted with the ideographs, and his knowledge of the language is limited to the technical legal vocabulary. But he has endeavored personally to satisfy himself as to the equivalent of every word or expression having any technical significance. If it was presumptous to attempt the task under the circum-

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1. The conditions of translation at present in this country are peculiar. The only persons who can completely understand the text of this material are a few of the older generation, (if indeed any one of these could),—so great is the gulf fixed between the younger generation and the feudal past of their country. On the other hand, the younger men alone are acquainted with English. The only method possible is to use for translation yonnger men who have some taste for the study of the past (and these are not numerous), and to have them consult *currente calamo* with the older scholars; and this has here been done.

stances, he can only plead, first, that there are not more than five foreigners in Japan who could read these materials in the original, and that many years must have elapsed before any one, foreigner or Japanese, was likely to arise who could attempt to do this work without assistance; and, second, that he is at least only following in the steps of competent workers in the same field.

Those who understand Japanese and Chinese will know how useless it is to expect a purely literal rendering. The nature of these languages, or rather, the modes of thought and expression, do not permit it. They are elliptical where we should be exact, and prolix where we should be brief. If in some cases the thought appears unclear in a translation, it is often because the writer himself has not thought it worth while to be what we consider clear. In the works here translated this feature is doubly emphasized. Ellipticisms and ambiguities abound in every document. The judges and clerks took no pains to write understandingly; for what they wrote was intended usually for each other's eyes and not for the public. Much of it all is made plain, after one has become drenched with the ideas and expressions by familiarity with the whole series of documents, and has learned to know what they wish to say rather than what they have said. But it is constantly a mere choice between different suppositions, and even the profuse use of brackets does not suffice to indicate all the passages where something has been supplied. The case is not much better with the Parts embodying the "Collection of Civil Customs"; for the redactor, being of the older generation, has allowed himself to be as elliptical as any one could wish, and there constantly occur the most unwarrantable ambiguities. On the whole, then, it cannot be hoped that there are not errors of rendering. We simply say that we have endeavored to minimize these. Moreover, a recent lessening of facilities for

access to the originals in the Department of Justice has diminished the opportunities for collation of passages.

At the present time three volumes (Part II, Part III (Section I), and Part V) have been made ready for the press; and though the first draft of the remaining portions is partly ready, there will perhaps occur in the later printed volumes some few changes of terms by way of attempted improvement. These inconsistencies will be unavoidable, but will be duly noted. Owing to the lack of a sufficiently large supply of type, not more than 100 or 120 pages have been set up at one time, and there are hence a few inconsistencies in the use of terms which would naturally occur where there is no opportunity to collate several hundred pages at once. In the preparation of the first portion of the Legal Precedents (Part III, Section I), where much experimentation was necessary in the arrangement of the page, the Printer's patience and intelligence have facilitated the work more than can be told. If a few typographical errors occur, the reader must remember what a feat it is, after all, for Japanese workmen to set up a book of the sort in a language of which they understand virtually nothing.

For kind assistance in the explanation of difficult terms, especial acknowledgment is due to Mr. Saji Jitsunen, the eminent Buddhist scholar, who has supplied information on technical Buddhist terms; and to Professor Komiyama Yasusuke, the antiquarian, formerly editor of that fund of information, the *Yedo Society's Magazine*. For special courtesies in obtaining the use of books, thanks are due to Mr. Kaneko Kentaro, Chief Secretary of the House of Peers; to Mr. Ideura Rikyo, formerly Private Secretary to the Minister of Justice; and to Mr. H. Kambara, Librarian in the Department of Justice.

II.

INTRODUCTORY SURVEY

BY THE EDITOR

OF

ADMINISTRATIVE AND COMMERCIAL INSTITUTIONS IN OLD JAPAN.

The purpose in this preliminary sketch is in no sense to review or to summarize the material published in the succeeding Parts; but merely to give a connected account of the institutions to which constant references occur. Space and time are economized by collecting all these explanations in one place and by referring the reader thereto from time to time; and a convenient opportunity is furnished for adding certain details of the Japanese administrative and commercial system which are not directly referred to in the text, but are of value as going to form the setting of the whole picture. If there were any other connected account of these matters, such a preface would be unnecessary; but there is not, and it would be useless to refer the reader for his information to volumes for the most part untranslated and inaccessible to him. With the view, then, of introducing him to the life of the community where these customs

prevailed and these precedents ruled, and of supplying a handy source of reference in his perusal of the main volumes, a brief survey of the subject has been prepared under the following heads:

1. The Feudal System.
2. Local Administration.
3. Religious Organization.
4. Administration of Justice.
5. Taxation.
6. Commercial Houses.
7. Guilds.
8. Transportation.
9. Money, Banks, and Commercial Paper.
10. Rice Trade.[1]

1.—*The Feudal System.*

The traditional and fundamental division of the whole country was into *kuni* and *kori*,—to be rendered, perhaps, by

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1. The following sketch is based chiefly on Japanese treatised and on articles by Japanese writers in the transactions of learnes societies and in antiquarian magazines. The latter are drawn in almost every case from documents, records, and other original sources, and written by the highest authorities on Japanese law and antiquities. Special acknowldgment is made under the various sections. In some cases, where the subject has been already adequately treated in a Western language, such an authority has been followed. For the feudal system have been used Dr. Yoshida's "Staatsverfassung und Lehnwesen von Japan," Hague, 1890; for the administration of justice (in part) Herr Rudorff's "Rechtspflege unter den Tokugawa," Tokyo, 1888; and for rural administration, Dr. Simmons' "Notes on Land Tenure and Local Government," edited by the present editor and published by this Society in 1891. Besides these authorities a number of original documents in the editor's hands have been consulted.

"province" and "county." This division dates back to at least the first century A. D., and is still recognized in popular language. These *kuni* in the tenth century numbered 68, but a few later subdivisions have increased the number. The *kori* numbered about 600. The *kuni* were arranged in 8 groups, as follows:

1. *Go-kinai* (August[1] Home Provinces), including Yamashiro, Yamato, Kawachi, Idzumi, Settsu:
2. *Tokaido* (East Sea Road), including Iga, Ise, Shima, Owari, Mikawa, Totomi, Suruga, Kai, Idzu, Sagami, Musashi, Awa, Kadzusa, Shimosa, Hitachi:
3. *Tosando* (East Mountain Road) including Omi, Mino, Hida, Shinano, Kotsuke, Shimotsuke, Iwaki, Iwashiro, Rikuzen, Rikuchu (these five known as Oshu), Mutsu, Uzen, Ugo:
4. *Hokurokudo* (North Land Road), including Wakasa, Echizen, Kaga, Noto, Echu, Echigo, Sado:
5. *Sanindo* (Mountain Shady Road), including Tamba, Tango, Tajima, Inaba, Hoki, Idzumo, Iwami:
6. *Sanyodo* (Mountain Sunny Road), including Harima, Mimasaka, Bizen, Bichu, Bigo, Aki, Suwo, Nagato:
7. *Nankaido* (South Sea Road), including Kii, Awaji, Awa, Sanuki, Iyo, Tosa (these four making the island of Shikoku, or Four Provinces):
8. *Saikaido* (West Sea-Road), including Chikuzen, Chikugo, Buzen, Bugo, Hizen, Higo, Hyuga, Osumi, Satsuma (these nine making the island of Kyushu or Nine Provinces), Iki, Tsushima:
9. *Hokkaido* (North Sea Road), being the island of Yezo.

Other groupings were occasionally used. *Kwanto* (East of the Gate) was the term applied to the eight provinces east of the Hakone Pass situated on the road from

1. Because it had been the Imperial Domain.

Yedo to Kyoto (Sagami, Musashi, Kotsuke, Shimotsuke Hitachi, Shimosa, Kadzusa, and Awa) which were the immediate possessions of the Tokugawa family. *Kamigata* (Upper Parts) was applied to the central-western provinces about Kyoto.

The *kori* were made up of *mura* and *machi*, villages and towns. But *mura* is a very variable term. It indicates a particular grouping of houses as well as a unit of local government. Thus, within Yodomura might be found Kawamura, Yamamura, and Tamura. Tanimura might or might not include Kotanimura (Little Tanimura) in its administrative limits. Only a careful examination of the village records can work out the correct details of the subdivision. Again, several *mura* together were sometimes termed *go*. This was probably an administrative grouping for taxation purposes, and doubtless obtained where the above custom of uniting several *mura* into one was not followed. Any one who has seen in Japan the clusters of cottages secluded in little green valleys half a mile or more apart will realize how these would have been too small for administrative units. The term *machi* was applied both to separate towns and to individual wards of large towns. Of course "town" is the original meaning. The appearance of Yedo shows even to-day how numbers of suburban *machi*, cut off by intervening hills, have gradually climbed the barriers and grown together into one large town; and in these cases each original group of houses has preserved the term *machi*, until it has come in these cases to be in reality a ward. The process is familiar enough in our own history.

But these *kuni* and *kori* were under the Shogunate geographical divisions only. The political divisions were the fiefs of the various territorial lords. Theoretically the Emperor was the fountain of government, and the Shogun was only his generalissimo, the preserver of peace and the leader in war. Practically the Shogun wielded all the power

of the Central Government. This is not saying that he was practical master of the country, for into a few of the fiefs of the powerful lords on the west and north no central administrative power ever entered. In fact, a Tokugawa man might not venture into the districts of the great Shimadzu family, the lords of Satsuma and its neighborhood, without more or less peril. The Tokugawa scholars, in writing about the administration, seldom disclose any knowledge of Western customs. The Shogun thus occupied a double position towards the greater lords who owed allegiance directly to the Emperor. He was as a feudatory only *primus inter pares;* at the same time he was as generalissimo vested with political authority over them. But the Tokugawa rulers were too wise to exercise this right unless the occasion made it unavoidable, and almost the only practical ways in which it found recognition were the journeys of these *daimyo* to Yedo in alternate years and the oath of fealty at the accession of a new Shogun.

It follows, then, that the Government now to be sketched possessed a sphere of influence of a maximum intensity at the centre, gradually diminishing until at the outer edge it became almost zero. The Tokugawa laws, so far as they were statutes, were the laws obeyed in this central district. At the top of this Government was the *Go-roju* (august Body of Elders) or Council of State, which usually numbered 4 or 5 persons. Under them was the whole body of official workers. After a fashion common in the Tokugawa administration, each Councillor took turns in presiding for a month over the matters of State. It can hardly have been that the others were quite idle during their vacant months. They seem to have consulted constantly, and the policy of the Council was certainly not subject to the breaks and changes which would have happened if the above arrangement had been strictly carried out.

The custom probably required merely that the ordinary routine of executive details should be attended to by each Councillor in turn. It is entirely contrary to the spirit of Japanese institutions that he should have attempted in any matter of consequence to act without being assured of the support of his fellow-members. We talk of the Shogun having had this or that policy, but it is a phrase only. The real rulers of Japan (that is, of the part which the central power reached) were these Councillors. From the time of Iyemitsu, the third Tokugawa Shogun, there was probably not a single occupant of that commanding position (except Yoshimune, the eighth Shogun) who did not register without hesitation whatever decree the Councillors agreed upon. They practically elected themselves; but they seem to have had wonderful success in attracting to their number the ablest men in the ruling class, for no country in Europe had a more tranquil history than Japan during the 250 years of their government. Where the Shogun was a minor, one of them was chosen to serve as Regent, and during his incumbency possessed a controlling influence.

Under this Council were the *Waka-doshiyori* (Young Elders) or Junior Council. These, too, were 4 or 5 in number. Promotion from this to the Council of State was naturally frequent. The Junior Council had a more limited sphere than its superior. Its direct control was exercised over offices below the chiefs of bureaus, when situated in Yedo. There were no bureaus independent of these two Councils, with three exceptions; these were the Adjutants of the Shogun (*Sobayonin*), the Temple Magistrates (*Jishabugyo*), and the Envoys of the Shogun (*Sojoshu*), and it is hard to believe that these were not more or less under the control of the Council of State. The other bureaus of Government, then, were divided into two groups, "inner" and "outer," that is, according as their headquarters were situated in Yedo or out of it. The "inner" bureaus

were as follows: Equerries, Chamberlains, Castle Guards, Censors, Town Magistrates of Yedo, Finance Magistrates, Auditors, Construction and Public Works, Military. Of course under these bureaus were a much larger number of staffs of various sorts,—police, military, education, finance, etc., and the direct control of these was in the hands of the Junior Council. It will seem strange that the chiefs of bureaus should be appointed by the Council of State, while their subordinates were appointed, not by themselves but by a collateral body. But this was a special feature of the Tokugawa administrative system, and was merely one of the many ways in which its founders had tried to provide checks against usurpation by rendering each official incapable of securing excessive power. This interlacing of authority was carried through the whole system, and complicated vastly the Governmental machine. The term "direct control," (*jiki-shihai*), sometimes used, indicated the relation between the appointing and the appointed person, not between the latter and his chief of bureau or section, who was said to be the *kashira shihai*.

The "outer" offices were those of Osaka—the Castle Commandant, the Military, the Town Magistrate, and the Town Censor; of Kyoto — the Commandant, with the Town Magistrate and a few others; of Nagasaki, Niigata, Hakodate, Shimoda, Uraga, Sakai (the sea ports), and of Fushimi, Nara, Sumpu, Yamada, Nikko, Sado,—in each case a Magistracy; and of the rural regions under the direct control of the Tokugawa family, in each district a deputy or an esquire, as will be explained.

All these officials were required to be vassals of the Tokugawa family. The Regent, moreover, must belong to one of the four families Ii, Honda, Sakakibara, and Sakai (popularly known as the "Four Kings," in allusion to a Chinese tradition) or of the Three Families (*Gosanke*) from which the Shogun was selected,—Kii, Owari, and Mito, the three branches of the Tokugawa family. The two

Councils and the three collateral bureaus were made up exclusively of the "loyal *daimyo*," hereafter described. For other offices the possession of a fief of over a certain assessment was required,—a 3,000 *koku* fief for a Town Magistrate of Yedo, etc. There were four grades of office,—*Taifu*, including the chiefs of bureaus above-mentioned, *Hoi*, including subordinate chiefs of sections, *Omemiye-jo*, or officers having the right of presentation at the Shogun's Court, and *Omemiye-ka*, officers not having this right. The last included all foot-soldiers, police and the like.

We come now to the feudal arrangements in the strict sense. The whole population were included in seven classes; first the *kuge* or Imperial aristocracy, who were of no consequence in the Government, except that they possessed the opportunity for intrigue which afterwards enabled them to assist the western lords in the overthrow of the Shogunate; next, the *samurai*, or military nobility; then the three orders of the common people,—*hyakusho*, or farmers, *shokunin*, or artisans, and *shonin*, or merchants; besides these were the priesthood, occupying a position apart, and the outcasts (*yeta* and *hinin*), fortunetellers, etc. who were, in the estimate of the time, hardly to be reckoned at all.

The term *samurai*, in its broadest sense, signified the entire military nobility or *buke*.[1] These fell of course, into two groups, the *daimyo* or feudal lords, and the *samurai* proper. There was no distinguishing mark between these classes, save that the assessed production of a daimiate must exceed 10,000 *koku* of rice. But at one extreme we find that the highest *daimyo* were feudally subject only to the *Tenshi* (Emperor) and possessed landed fiefs, while the lowest *samurai* were always dependent on some intermediate lord, and were paid by a stipend of rice from the storehouse of their lord. One division of *daimyo* was that of *kokushi*, lords of a whole province,

1. Dr. Yoshida states that *samurai* was a generic term including the *kuge*. But in ordinary usage this seems not to have been so.

ryoshu, lords of a smaller district, and *joshu*, lords of a castle. But the common one was the classification of *gosanke*, the three great families from one of which the Shogun must come, *kokushi*, or great provincial lords, and the lesser nobility, who were divided into Tokugawa vassals (*fudai*, literally, "loyal families") and vassals of the provincial lords (*tozama*), though the exact significance of these terms has been a matter of some dispute.[1] The *samurai* proper were of two kinds, higher (*seishi* or *joshi*) and lower (*kashi*). The higher class were the knights, in the strict sense of the term. They alone had the privilege of following the lord to battle on horseback; in fact, those whose territory was assessed for more than 500 *koku* were obliged to provide a horse and accoutrements. They had privileges in all respects similar to those of the higher nobles, except the lords of provinces. The distinction between them and the lower *samurai* was well marked, for they had a power of punishment over the latter of the same nature as their power over the peasants and other common people. These *seishi* were of two sorts, according as their allegiance was directly to the Tokugawa chief (*chokushin*) or to some other feudal lord (*baishin*). The former are usually known in history as the *hatamoto*. They filled most of the Shogunate offices and furnished the greater part of the Tokugawa armed forces. The corresponding class of provincial vassals was known as *kerai*,—a term having also, however, a broader signification. A *daimyo* of 100,000 *koku* (such as Date of Sendai) would have perhaps 1,000 *samurai* of this rank. The lowest class of *samurai*, the *kashi*, formed the ordinary foot-soldiery. Those belonging to the Tokugawa House were known as *gokenin* (men of the August House) and they were apt to be conceited and overbearing in their relations with the retainers of the provincial lords. This lowest rank had

1. See Gubbins, in Trans. As. Soc. Jap., XV, 135; Rudorff, in Mitth. d. D. Ges. Ost., 38, 381.

of course many subdivisions, and the terms *yoriki*, *kachi*, *doshin*, *ashigaru*, which one is often puzzled by in Tokugawa records, were merely names given to the various groups according to their occupation in the civil or military service.

The connection between public offices and vassalage in the Tokugawa family led to still further subdivisions of classes. The *hatamoto* were divided into *taishin* or *yoriai*, with incomes of 3,000 *koku* and over, and *omemiye-jo*, with incomes between 300 and 3,000 *koku*. The higher class were known as *taishin* or great vassals, when they were in active service in an office, and as *yoriai* (either *kotai-yoriai*, alternate councillor, or *hira-yoriai*, ordinary councillor) when their office was an honorary one only. The lower *hatamoto* and the *gokenin*, when not in active service, were known as *kobushin*. The offices were not hereditary, except probably where the office itself was the only foundation of the feudal relation, as in the case of the police.

The titles of the higher nobles must be considered for a moment. A quotation from Mr. Gubbins[1] will best elucidate the subject.

"The titles borne by *daimyōs* form a rather complicated subject. They may be divided into two classes: territorial titles,[2] which were the earliest, and official titles,[3] which were of later creation. The territorial title of a *daimyō* consisted of the word *kami* joined to the name of a province, and originally this title was taken, as was the custom also in many cases with family names, from the territories which he held. Thus the *daimyō* of Shinshū was called Shinano-no-kami, the *daimyō* of Ōmi, Ōmi-no-kami and so on. The title of a *daimyō*, therefore, in early days had direct reference to the province in which his territory was situated. In the

1. Trans. Asiat Soc. Jap., XV, 137. 1. Known as *Kuni-kami*. 2. Known as *Ryō-gwan*, and so called because the seat of Government was at Kyōto.

course of time, however, though this territorial title remained in general use, it by no means necessarily followed that there was any connection between the particular province mentioned and the territory actually held by a *daimyō*. This change in the significance of the title was due to several causes :—to the partition amongst several *daimyō* of lands originally held by a single individual, to the removal of a *daimyō* to another part of the country, and to the formation of cadet houses. In the first case, instead of one *daimyō* of Musashi, for instance, there came to be three or four ; in the second case the change of fief made no difference in the title ; and in the last case, although the family name was invariably retained, there was no fixed rule as to the retention of the title, which often remained the same. This multiplication of similar titles led to much confusion, and in late years, by way of remedying this inconvenience, if when a *daimyō* was appointed to the *Gorōju*, or Upper Council of State, it was found that an existing member bore the same title, the newly appointed Councillor was obliged to adopt another in order to distinguish him from his colleague. . . . .

"The history of the other, or official, titles is this. When the administration of the country passed out of the hands of the *kuge* into those of the military class, the official posts formerly held by the Court nobles were filled by *daimyōs*, who accordingly assumed the official titles which were attached to those posts. The *daimyōs* who were thus originally appointed held the official titles merely during their tenure of office ;[1] but as time went on and successive changes occurred, the duties of these posts became merely nominal, until at last the titles became hereditary, and had no connection with the discharge of official duties.[2] . . .

1. In the earlier days of the feudal system, some of the *kuge* occasionally assumed the territorial titles belonging to the *daimyōs*, but such instances were rare. 2. It should be explained that each title was not limited to one individual. Many *daimyōs* had the same title.

"There were in Ieyasu's time in all about 60 of these official titles, which were held under the Tokugawa administration by both *Fudai* and *Tozama*.[1] . . . .

"As instances of the hereditary assumption of these titles, the cases of the *Daimyōs* of Satsuma, Chōshū, and Hikone in Ōmi may be cited. The title of Shuri-no-Daibu was hereditary in the Shimazu family, that of Daizen-no-Daibu in the family of Mōri, while Ii, the *Daimyō* of Hikone, was styled Kamon-no-Kami. In some cases too the official title was always borne by the Head of the clan, the territorial title devolving on the eldest son and heir. Thus the eldest son of the Mōri family was known by the title of Nagato-no-Kami. . . . . .

"It must not, moreover be supposed that both territorial and official titles were common to all *Daimyōs*. Some had both, others again had one and not the other, while many of the lesser *Damyōs* bore no title at all."

It is with the mutual relations of these various classes that feudalism proper is concerned, and we now turn to the different aspects of the feudal relations, taking first the subject of the feud.

On the one hand was the lord of the feud, the person from whom it was held. In Japan the Emperor stood as the lord of the whole land from whom all feuds must be held. It would seem that subinfeudation placed the lower vassal in feudal relations with his immediate lord only, and not with the Emperor. Thus the first rank of feudatories holding directly of the Emperor were the large provincial *daimyo*, or *kokushi*, the *tozama daimyo*, not subordinate to the Tokugawa family, and the Tokugawa

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1. Before Ieyasu became Shōgun, these titles were arranged in order of seniority, and a *Daimyō* might be promoted for meritorious services through each step up to the highest degree. Ieyasu himself passed through five grades, beginning as the simple *Daimyō* of Mikawa without any title at all.

lords. Under these came a host of vassals, who in turn were lords of others still further below. What Japanese history still needs is an accurate feudal map of the country, showing the distribution of fiefs and the inter-relations of lord and vassal. On the side of the vassal certain qualifications were required. He must be of an age —15—capable of bearing arms. He must have been born a *samurai*. He must be skilled in the accomplishments of a soldier, riding and archery, spear and sword practice. He must, in theory at least, possess the education of a gentleman. He must not be a dishonorable or infamous person, or weakly in mind or body. But naturally these requirements were not always strictly carried out in practice.

The object of the feud, the thing which the vassal received and for which he rendered service, might be one of three things. First, it might be a territory, of larger or smaller area. The larger fiefs were known as *ryochi* or *ryobun*, the smaller ones as *shiro* (castle). A *joshu* was the lord of a castle, that is, of a castle and the territory immediately around it. Secondly, the feud might be merely a right to receive an income (*chigyo*) from a certain area of land. This land might include one village or fifty, or perhaps only a dozen rice-fields, and was called *chigyo-sho*. But the vassal obtained no right to govern the land, and no power to increase or diminish the proportion of the produce assigned to him. The cultivating peasant was, however, bound to join his train as a servant in case of war. But the *hatamoto* who possessed *chigyo-sho* were able to break these rules with impunity, and to increase their real income far beyond its nominal figure. The lowest sort of feud was the right to draw annually from the lord's store-house a certain amount of rice. If its amount was reckoned by the number of rice-bales, it was called *hyo-mono* (bale-estate), and was regarded as of higher rank. If the reckoning was according to the number of persons in a family, the name was

fuchi. The income from a *hyo-mono* might exceed that from a *chigyo-sho*, but it never ranked as high. Most *samurai* began with the lowest grade; and if by bravery in battle or by skill and industry in civil office they showed preëminent merit, their reward was the promotion to a *chigyo-sho.* The commonest generic names for the stipends from *chigyo* down were *roku* and *on-fuchi-mai.* In al feuds, there was included in addition a place of residence, granted by the lord to the vassal, and always situated in some castle-town. The size of this *yashiki* varied with the feud; but an inferior vassal having, say, 100 *koku* a year would have a plot of about 1 *tan* in area (¼ acre).

Among the obligations of the vassal first and foremost, of course, came the duty of personal service in war. This formed the chief reason for which the feud was given, and involved several minor duties. The vassal must naturally be prepared, in time of peace as well as in war, to perform this highest duty, and he must keep his fief, if he was a territorial lord, in such a state of prosperity and productiveness as would best enable him to fulfil it. He must arm and equip himself and his followers, and the number of the latter must of course be in proportion to the size of his feud. The rules varied at different epochs, but there were included, in the train of a large *daimyo*, knights, swordsmen, riflemen, artillery-men, archers, pikemen, standard-bearers, lancers, and numberless servants of all kinds. A *samurai* of 500 *koku* was in 1640 expected to bring 11 men; a *daimyo* of 50,000 *koku* was looked to for 1,000 men. But by 1861 the former requirement had dwindled to 1 man, the latter to 163 men. Another of the personal duties was that of following the lord upon his journeys. This meant usually the attendance of a certain number of *samurai* upon each *daimyo* during the year of his residence in Yedo. During the remaining time each *samurai* took his turn at the castle-watch, either as officer or as private. The duty of serving as civil

officials was also an important one, and in the latter days of the Shogunate the number of these had greatly increased. The civil officials of the *daimyo*, who was usually a *fainéant*, were the real rulers of the fief, and from them came most of the present administrators. Beside these personal services, the lord was entitled to certain material benefits from the property of the vassals. There were gifts—voluntary only in name—to be presented from the fruits of the fief, and almost every month called for a special article. There were New Year's offerings, or *chomoku*, which signified the presentation of an appropriate sum of money. The price of a horse and a sword was customarily due at certain times. We find also what is known in European law as "relief," the payment of a fee upon the occasion of the investiture of an heir, and "wardship," the payment of a sum of money during the time when a youthful vassal was unable to render military service. In contradistinction to these duties, there existed also certain rights of the vassal. The chief mark of the feudal vassal was of course his enjoyment of the territory or income which formed the object of the feud. Next in importance was the right to carry two swords, the great privilege of the *samurai*. Besides this he enjoyed exemption from taxes and other burdens, the privilege of using a family name and a crest, the right of hunting, of riding, and so forth. But it is difficult to say how far some of these privileges may be regarded as pertaining to the *samurai* as a fief-holding vassal, or merely as one of a privileged social class.

Such was the feudal relation, in what may be called its stationary aspect. But every feud had a beginning and perhaps an ending, and it was often transferred from one person to another. This brings us to the creation of the feud.

Investiture (*meshidashi*) of the vassal by the lord was the sole method. The ceremony was a simple

one, and consisted merely in handing to the *samurai* the deed of enfeoffment in the presence of certain officials. The enfeoffing deed was the ultimate foundation of the vassal's rights, and was necessarily a priceless possession. There are many tales of faithful retainers saving this heirloom of their masters at the risk of their own life. The more honorable sort (*kwan-jo*) was written entirely by the hand of the enfeoffing lord, and usually came as a reward for some act of special bravery in battle. The ordinary kind (*koku-in* or black seal) was merely sealed by the lord. The inheritance of the feud followed as a rule the principle of primogeniture. If the first-born son had died before the death of the fief-holder, then the eldest son of the former inherited. But exceptions to this rule often occurred, the requisites being the previous agreement of the members of the family and the permission of the authorities. Where no natural sons existed, adoption was often resorted to. As a rule the incumbent retired at about the age of 50, handing over the fief to the successor during his lifetime. In all cases the permission of the superior was necessary; but if properly requested it could not be refused, for the feud was not a mere life-possession, and the successor had a right to demand its enjoyment.

The alienation of the feud was as a rule not permissible. In Japan the personal element of the feudal tie was a strong one, and any transaction which had the effect of dissolving this tie was regarded as unlawful. A sale of the feud, therefore, or any transfer which replaced the vassal by a new one or gave over to another the object of the feud, was forbidden. The influence of this rule, however, did not reach to Kyushu, where the feudal lords did much as they pleased. Nor had it any application to the inferior feuds, the *hyomono* or rights to a stipend of rice from the lord's storehouse. These were alienable at pleasure, the only requirement being that the transferee should take the family name and the

rank of the transferor. But in all cases two sorts of partial alienation were permissible, (1) sub-infeudation and (2) mortgaging. The former was of course a necessary feature of the feudal system. The operation of the latter varied according as the feud was of the higher kind or was merely a right to a rice stipend. In the latter case the sale of the feud was usually possible; but the creditor attained his object by receiving from the debtor a ticket which entitled him to draw from the storehouse, until paid, the stipend of the debtor.

In the former case the feud could of course not be sold by the creditor for nonpayment, and his right was therefore limited to taking the produce of the land for so long a time as was required to repay himself. But all mortgages were limited to 10 years; and it seems doubtful whether this right of enforcing payment was often realized. A favorite method of evading the necessity of a formal resort to this right, with its doubtful issue, was the exacting of a mortgage from certain of the lord's villages on their tax-rice or entire produce. The instruments were made out by the villagers themselves, sometimes as for a debt of their own, sometimes expressly as security for a debt of their lord. A number of instances will be found in the Legal Precedents.

The extinction of the feud might occur in a number of ways. The death of the superior without heirs or the his forfeiture of his feud, the death without heirs or the renunciation of the vassal, might have this result. But the fault of the vassal was the most usual source. In the first place any intentional injury to the person, the property, or the honor of the lord would be a ground of forfeiture. Furthermore, neglect of duty might have the same consequence. The careless loss of the deed of investiture, the loss of the sword, the failure to announce a successsion, and gross malfeasance in office were here included. The perpetration of a crime or the serious infringement of the

rights of others might also, if it reflected on the honor of the culprit, draw with it the forfeiture of his feud. It would seem from some of the Legal Precedents that mere inability to pay debts might be regarded as sufficient cause for dismisal. The inquiry of the Lord of Ise, in No. 19 of Part III, Section I, is a naive expression of the current sentiment upon the subject of a lord's rights.

Leaving the topic of the relations between lord and vassal, we come to the administrative relations between the ruling class and the people, that is, to the

2.—*Local Administration.*[1]

And first of the territory directly governed by the Shogunate. It has been seen already that the officials set over the business of local government were in two general groups,—those in charge of rural districts, the *jito* and *daikwan*, and those in charge of large towns, the *bugyo*. The government of Osaka and Kyoto differed from that of the other large towns chiefly in that certain military officials were over the civil Magistrates (*bugyo*), because of the castles in those places. In Yedo the town government was more or less complicated by the presence of the bureaus of Government, but the Magistrate was, as elsewhere, at the head of all the civil affairs in the town.

Taking up first the rural districts, we find it difficult at the outset to be certain of the exact functions of the *jito*. That he might be the possessor of an income-fief (*chigyo-sho*), and not merely a stipendiary, as the *dai-*

1. The material for the following section is taken chiefly from two manuscript official histories of local government in Osaka and in Sendai; from essays by Professor Komiyama, the antiquarian, founded on local records; and from Dr. Simmons' "Notes on Local Government."

kwan was; that he was an agent of the Shogunate; and that he was sometimes coördinated with *ryoshu* (*daimyo*), sometimes with *daikwan*,—these seem clear. If one may infer from what little direct evidence there is, the *jito* was a Tokugawa vassal placed in close proximity to a *daimyo* not owing fealty to the Tokugawas; a number of them being placed in all parts of the country. His fief was not large, for we hear in one instance of a large landiord being popularly termed *jito*.[1] He had judicial authority of his own, though probably no more than a *daikwan;* but he had the personal interest of a territorial feudatory in his land, and not the merely supervising functions of a *daikwan*.

The *daikwan* (deputy) was the typical local administrator. He was appointed from Yedo. The district under him might be of varying size, nominally of 50,000 *koku* assessment or less; perhaps it is safe to say that from 40 to 100 villages were included. It was not at all coincident with the boundaries of *kori;* in the description of a plaintiff's domicile, he is usually described as belonging to a certain *kuni*, *kori*, and *mura*, in the district of such-and-such a deputy. The office combined the functions of judge and revenue-officer. The official residence, with jail, office, and court, was called *jingoya* (camp). His salary was fixed at 110 *ryo* of money and 63 *hyo* (bales) of rice, for every 100,000 *koku* in the assessment of the district under him; but in the western regions, where presumably the service was somewhat dangerous and called for special ability, the money allowance (*teate*) was increased to 124 *ryo*, the office-holder in that nest of disaffection, Kyushu, getting 140 *ryo*. This allowance presumably covered certain incidental expenses

1. The term "esquire" has been used for *jito*, because it seemed to indicate, in its corruption into "squire", the similar confusion of senses attending the use of the word *jito* (lit., land-chief).

of the office. The staff of the deputy, some two score in number, was as follows, according to *Chiho Seido-tsu* ("Provincial Government"):[1]

"1. *Motojime-tedai* (source-office deputy). These were 2 in number, and had charge of financial matters, under the direction of the *daikwan*. The salary was 52½ *hyō* (bales) of rice. 2. *Hira-tedai* (common deputy). These were 8 in number and had charge, under the direction of the *daikwan*, of miscellaneous matter. The salary was 20 *ryō* of money and 18 *hyō* of rice (for one grade), 15 *ryō* of money and 13½ *hyō* of rice (for the other). 3. *Kaki-yaku* (writing office). These were 3 in number, and their occupation was the writing and copying of letters. The salary was 7 *ryō* of money and 9 *hyō* of rice. 4. *Yō-nin* (chamberlain). This officer attended to the household affairs of the *daikwan*; his salary was 7 *ryō* of money and 9 *hyō* of rice. 5. *Samurai*. Three *samurai* attended the *daikwan* constantly, to do his bidding. The salary was 4 *ryō* of money and 4½ *hyō* of rice. 6. *Chūgen* (servant). Seven of these servants waited on the *daikwan*. The salary was the same as that of the *samurai*."

Of the training and functions of the *daikwan*, Dr. Simmons gives a good description:

"The office was generally hereditary, usually in an old family of the locality. Still the length of any one incumbency was about five years only. Usually a small *hatamoto*, often a *gōshi*, occupied it. The occupant was never called on to do military service as a bearer of arms; he served, if at all, only as commissariat officer. The directions given in the *Jikata Hanrei-roku* are that these officials should be men trained to the keeping of accounts, should have a general knowledge of civil and criminal law, and should be familiar not only with the customs of the locality over which they presided, but also with those of adjacent regions. Their education was especially in the line of finance, par-

1. Cited in the notes to Simmons' "Notes, etc.," p. 53.

ticularly in early times. Other than themselves and the *bōzu* (priest) few had education enough to fill the position of tax collector and accountant. Thus they really formed a special class trained for this life.

"The office was not subject to political jobbery, I am told, though there is reason to believe that this was not always the case. The position was in some degree patriarchal in the respect which it received, and though its incumbents were subject to removal for corruption and bad management, such an occurrence was comparatively infrequent. As has been said, the policy of the Tokugawa Shōguns, especially of Iyeyasu, was to change as little as possible the established customs of the different localities. The advantage of the system was a thorough acquaintance by the officials with the districts and the special requirements of each. Again, in the little-changing population of those times the *daikwan* came to be the nominal supreme authority. The people heard that there were such persons as a Mikado, a Shōgun, a *daimyō*, but to them the *daikwan*, whose family had in many cases been the governors of their ancestors for generations, became, to their limited view, *the* Government. . . . . .

"I found in the *Jikata Hanrei-roku* the following directions as to the spirit in which the *daikwan* should exercise his function: His duties were to adjust the boundaries of large divisions of lands, such as *mura* (which in mountain districts because of imperfect surveys often became the subject of dispute), and of individual holdings; to assist in the complicated and difficult management of water supply for irrigation, of the repairs of dikes and of embankments; to carefully inquire into and equitably adjust the causes of failure, partial or entire, of crops from overflow, winds, insects or insufficient supply of water, and to make a just re-assessement of taxes on such land; to see to it that the local officials advised with the farmers about the kinds of seed and their quality, about

improvements in methods of cnltivating various kinds of land, about ploughing and manuring, and about everything pertaining to the best method of agriculture. Especial attention was recommended to the adjustment of the regular assessment on land of all kinds according to its productive power, of the quality of the soil, to its exposure, favorable or unfavorable, to the prevalence of destructive winds, to the quality of unfailing water supply, in fact to every possible thing which could effect the quantity and quality of the products of the soil,—the official thus shielding the farmer from unjust assessments and at the same time securing to the lord the just return in taxes. In prosperous times the farmers were to store up (against failure of crops, epidemics, etc.), without removing the husks, such grains as did not spoil. This the officials were to encourage and urge the people to do, so as to prevent alarm on the approach of dry weather or of epidemics. They were to be encouraged also to plant wet went land with trees and shrubs, and also to plant trees to protect the fields from the winds. . . . . .

"But, says the essayist, the *daikwan* and his officials should not be severe or dictatorial, or the people will be irritated and obstinate; nor should they be too familiar and indifferent, or the people will lose respect for their superiors. A dignified middle course should be aimed at by the *daikwan* in all their dealings with the people. However skillful officials may be in applying the technicalities of legal administration, if they have not sufficient regard for justice, extenuating circumstances, if they are unnecessarily strict, they will not have done their duty. Even if people seem to be prosperous, technicalities should not be in all cases insisted on as if it were praiseworthy to do so. The spirit of all administration of land revenue is to give the farmer the benefit of all doubts and not to insist on technicalities. His prosperity should excite the satisfaction rather than the cupidity of the lord.

"No short-sighted policy governed the Tokugawa administration, nor any consideration of temporary gain by severe taxation. The *daikwan* who used sharp practice in collecting revenue or in drawing the line against the farmer to the utmost limit in order to gain special favor was almost sure to come to grief sooner or later. The *hyakushō-tsubure* or 'farmer-destroyer' was a role utterly opposed to the economic policy of the founder of the dynasty and of his successors. Taxation might be pushed to the utmost ability to pay, but it was never permitted to go beyond this and to force an industrious farmer into bankruptcy or to borrowing on a mortgage."

Within the district of the deputy each village (of whatever size it may have been) was treated as a unit. The vast majority of the people in all the villages were engaged in agricultural industries of one sort or another. A great deal of manufacturing was carried on, but only in the intervals of agriculture. There was a great difference between the social standing of the various members of the village, but every family was registered in one or another of the groups (*kumi*) known as "five-men companies" (*go-nin-gumi*). The principle was always that of contiguity of residence, and the purpose was the preservation of order by means of the enforcement of mutual responsibility. As a matter of fact the members of the *kumi* were almost all landholders, in some small amount, at any rate, though it is hardly probable that the ownership of land was requisite. But it may be asserted that practically a very large portion of the villagers were the tenants of the remaining few. We constantly read of disputes between the small farmers (*komaye*) and the great farmers (*cho-byakusho*), and a village register sometimes shows nearly all the land to be in the ownership of a few. The solution is perhaps that the position of *kosaku-nin* (tenant) was not that of a fixed status; he might be the owner of land, and yet in addition hire

land from another; and we may suppose that while each one made it a point of social respectability to retain at least a small plot of his own, besides his house, the chief occupation of a greater or less proportion of the villagers was the cultivation of the land of others as tenants.

In each *kumi* one person served as chief (*go-cho*, *kumi-oya*, *ban-gashira*), usually the most important or intelligent of the number. His seal was necessary in almost every transaction of any importance where one of the members was concerned. Doubtless it is the seal of the chief which is meant where the statement occurs, in the ensuing Parts, that the seal of the *kumi* was necessary.

The first general officer of the people seems to have been the *kumi-gashira* (company chief), who originally was doubtless only one of the chiefs of these companies. He acted as assistant to the headman; and received as a salary a rebate of local taxes or perhaps a direct stipend. According to the number of *kumi*, there might be two or more *kumi-gashira* in one village. Next above this person was the *toshiyori*, who in the Shogunate districts was rather a patriarchal adviser than an officer. At the head stood the *nanushi* or *shoya*. These seem to have been different terms for the same officer, *nanushi* being peculiar to some regions, *shoya* to others. There is some ground for thinking that *shoya* was, in origin at least, peculiar to the South and West; but certainly there are instances of the term in the East; and in one of the legal precedents we find (apparently) the theory-rending occurrence of a *shoya* and a *nanushi* in the same village.[1] But at any rate the normal situation was a single person

1. For details on this and related topics, reference must be made to Dr. Simmons' "Notes, etc.," and the annotations. Care has been taken in Parts II and V to note the occurrence of the terms *shoya* and *nanushi*, so that future workers may be able to make inferences from the usage with reference to those terms.

termed *nanushi* or *shoya*, exercising the functions of headman. From the point of view of the *daikwan* and the Government the headman was responsible for the conduct of the peasants,—for the payment of taxes, for their observance of all private and public obligations, and for the preservation of peace and order by the community. From the point of view of the villagers, he was their representative in their relations with the *daikwan* and the Government, their chief in matters of local autonomy, and their arbiter in all disputes. His office was at first hereditary; but in the last two centuries it cannot be said that any fixed rule prevailed. Circumstances determined whether the son should succeed his father, or a new family be sought. No doubt a new election was very common, and in some parts there were definite rules for the purpose. Practically the choice was restricted to the large landholders. But nowhere does the Government appear to have directly nominated the incumbent.

The headman, with his assistants, attended to all the details of village economy,—keeping the registers, assessing taxes, paying expenses, etc. But there was usually a *hyakusho-dai* (farmers' representative), who appeared for the villagers where their pecuniary interests were involved and represented them in the discussion preceding settlement. It is likely that he was employed chiefly in villages where there was a marked difference of condition between the higher and lower farmers,—where the latter were practically tenants of the former and consequently had interests opposed to them; for the great farmers would be in possession of the offices and would assess taxes and settle accounts with an eye to their own benefit.

There was a village assembly (*yoriai*), of course,—not on stated occasions (other than the beginning of the year, when accounts were the subject of discussion), but from time to time as occasion needed. It is clear that none but

land-owning heads of families could vote in these assemblies. The only question is as to a further limitation of the right. No doubt in many cases the voting privilege was limited to a certain set of the large landholders, and grades of social rank were associated with the privileges of the assembly. In Part VIII will found a case on this subject.

So much for the region administered by the Tokugawa family. It is to a certain extent typical of the methods employed in the independent fiefs. There were probably greater differences in land tenure than in administrative methods. Perhaps the simplest plan is to describe briefly the rural organization of the Sendai fief, the best governed and most important in the North.

The fief was divided into four counties, over each one of which was a Magistrate (*kori-bugyo*). Each county was again subdivided into districts (*kori*), the numbers being 7, 8, 6, and 5 respectively. The Magistrate was appointed by the lords of the fief, and must be a *samurai* of the *ban-samurai* grade (corresponding to *hatamoto* under the Tokugawa system). He had immediately under him a staff of some 20 assistants,—registrars of land-transfers, tax-collectors, clerks, superintendents of public works, attendants, etc. Of these the higher ones must be of the *ban-samurai* grade and were appointed by the Treasurer of the fief, on the Magistrate's recommendation; while the lower ones were appointed directly by the Magistrate. The whole fief was divided into 18 administrative districts (*ku*), over each of which was a *daikwan* (deputy),—the numbers in each county being 4, 4, 5, and 5 respectively. Where two or more of the *kori* (the old political divisions, now become geographical only) fell into a single *ku*, there were usually two offices established under the single *daikwan*. Attached to his office was a staff of from 10 to 20 assistaints,—assessors, tax-collectors, supervisors of public works (drains, roads, bridges, rivers, aqueducts

etc.), foresters, accountants, etc. The *daikwan* was appointed by the Chief Seneschal (*karo*) or other chief minister of the lord of the fief, on the recommendation of the *kori* Magistrate, and must be of *ban-samurai* rank. The assistants were appointed by the Magistrate, on the recommendation of the *daikwan*. In each *ku* also was a district-inspector (*gun-po-yokome*), whose duty it was to keep a check on the *daikwan* and his assistants, by observing and reporting on their doings. The inspector was appointed by the Treasurer of the fief.

The Magistrate was in full charge of the civil affairs of the county, through which he usually made (in spring and autumn) two journeys of inspection every year. He could pass final judgment, on appeal from the *daikwan*, in all cases except grave crimes; and even in these he held a preliminary hearing, and, when case was referred for final decision to the Magistrate of Decisions, he sat at his side as adviser. He superintended the conduct of affairs by the *daikwan*, and made recommendations to his chief the Treasurer as to their appointment or discharge. He had special charge of the tax-levy, the construction of public works, the transfer of land, and the lending of Government rice to the people.

The *daikwan*, acting under the Magistrate, attended to all the details of the matters in which the Magistrate had the final sanction,—assessment and collection of taxes, lending of rice, public works, etc., though a certain amount of discretion was allowed. He was also in constant relations with the village officers in the minor affairs of the villages.

The popular officers, that is, those who did not belong to the ruling *samurai* class, were the chief headman (*o-kimoiri*), the headman (*kimoiri*), the chief of companies (*ō-kumigashira*), and sometimes the elders (*toshiyori*), or village-representatives (*mura-sodai*). There

were one or more chief headmen under each *daikwan*; they were appointed by the Magistrate, on recommendation of the *daikwan*. They collected taxes, paid out expenses, acted as subordinate judges, and supervised the lower officers. The headmen (*kimoiri*) were usually one to each village, and were appointed by the *daikwan*. Each one kept several books,—one containing recommendations as to repairs of roads and bridges, another a general journal of official doings, and a third exhibiting the tax list,—and acted as the representative of the people to the Government. The chief of companies looked after the laborers on village public works, and saw to other details of village administration. Needless to say that below all these the population of every village was divided into companies of five families each, one person being the company chief, and all the members bearing mutual responsibility for each other's conduct. These lower officials, with the exception of the chief headman, received no salary, but an exemption of their land from taxation served the same purpose, and the headman received also certain fees. The chief headman was given the income of land assessed at 50 *koku*, and had also the *samurai* privileges of using his family name and wearing two swords.

In other fiefs there was some difference in the nomenclature of the offices, and the organization was perhaps less carefully systematized. The amount of independence vouchsafed to the local communities was probably less than in the Tokugawa dominions. The intervening office of the *o-kimoiri* (chief headman), not usual in the Tokugawa districts, was sometimes paralleled by an *o-shoya* or *o-nanushi*, and probably the *toshiyori* (elder) took the place of the *kumigashira* of the Tokugawa and the *o-kumigashira* of the Sendai fief.

We may now turn to the town-government,—that is, in communities which were sufficiently large centres of

commerce—not mere post-towns—to have a Government representative independent of the *daikwan*. Here Osaka will be taken as the type, and the variations in other towns will be briefly noticed.

At the head of all, as has been said, was the Castle Commandant of Osaka; but the actual heads of the civil affairs of the city were the two Town Magistrates, appointed by the Government from among *samurai* of high rank. Under them was a numerous staff of officials of all sorts,—*samurai*, of course. They were individually of one of two ranks, *yoriki* and *doshin*. The latter were usually only subordinate officials performing the details of work under the supervision of *yoriki* and the bureaus in which both are grouped bear substantially the same names. These bureaus were as follows: Councillors of the Magistracy, Superintendents of *doshin*, Censors, Judicial officers for cases between outsiders and Osaka citizens, Temples, River-cleaning, Registration of families, trade guilds, etc., Castle supplies, Auditors of accounts, Fire-inspection, Execution-sales, Accountants, Hyogo-port affairs, Weights, measures, and licenses for ships and vehicles, Explosive weapons owned by individuals, Nagasaki silk trade, Foreign trade, Banished criminals, Prison supplies, and Ward inspection. In the lower or *doshin* rank were a few additional bureaus: Clerks of court, *juges d'instruction*, examiners of civil suits, lower judges for thieves, thief-catchers, bridge-superintendents, etc. From these lists one may gather an idea of the part of the local administration which was kept directly in the hands of the Government's representative. Below all this and complicated with it went on the semi-independent life of the citizens themselves. Osaka was until the Meiji period divided into three sections (*san-kyo*), formed by the gradual amalgamation of neighboring centres of population. They came to be known as North *kumi* (district), South *kumi*, and Temma *kumi*; the first containing 250 *cho* (wards), the second

261 *cho*, the last 109 *cho*. The whole city was presided over by a number of men called *so-toshiyori* (general or chief elders). When at the beginning of the Tokugawa rule the city began to assume commercial importance, the townspeople had been directed to choose, through their old men, a number of persons to manage the trade of the place. These persons, at first 21 in number, afterwards 14, then 10, managed to make their office hereditary in their families, though the Magistrate of course retained and sometimes exercised the power of dismissal. There was a General Assembly Office (*so-kwai-sho*) at which they met from time to time.

They seem to have had little to do with the administration of justice, except as the Tokugawa policy required all the popular officials to bring about private settlements before the cases got into the regular Courts. But they supervised the affairs of the wards as a whole, managed the assessment and payment of the Government tax, and had a controlling voice in the appointment of the ward elders.

There were attached to this Office some 17 persons, known as *so-dai* (general representatives), together with a number of clerks whose appointment and dismissal lay with the Chief Elders. The *sodai* themselves were appointed from the three districts by the Chief Elders with the approval of the Magistrate,—7 from the North, 6 from the South, and 4 from the Temma; but it appears that the selection was usually in the line of family succession; and this was the more easy, as there were always 24 sub-assistants taken from the families of the *sodai*, and thus there was plenty of trained material from which to select. Their duties are somewhat obscure: but it seems that they were looked upon as the representatives of their district at the Magistracy and the General Assembly Office, and took charge of those matters which the local elders were prevented from attending to by the press of their own occupations.

These Chief Elders and Representatives doubtless had no other occupations, as their offices were hereditary. But the ward elders were chosen anew at every vacancy, and thus public office was with them only an avocation. The city had 620 *cho*, it has been said. But not every *cho* had an elder of its own. Sometimes 1 or 2 *cho*, sometimes 4 or 5 *cho*, had a single elder. The terms *cho* and *machi* are usually interchangeable, but here *machi* is always associated with the term "elder" as denoting the district over which he presides, while *cho* is reserved as a geographical designation,—which however was of importance in the assessment of certain taxes. Now the *cho-nin* (people of the *cho*), by which seem to have been indicated the house-owners only, not the renters, elected the elders. They assembled at the ward-assembly office (*machi-kwai-sho*) and cast their votes; and the three or five names standing highest were sent to the Chief Elders. The latter ascertained the facts bearing on the character of each candidate and laid them before the presiding Town Magistrate, with a recommendation. In theory the Town Magistrate should then have made an even more strict scrutiny of the character and capacities of the men on the list; but in fact he seems usually to have followed the recommendation of the Chief Elders, and probably the motives determining their selection were not always grounded on impartiality and integrity. The ward-men and the candidates were then summoned to the General-Assembly-Office, and the announcement of the Magistrate's sanction was made; and on that or the next day the successful candidate appeared at the Ward-Assembly-Office and received the congratulations of his fellow wardsmen. The latter, it should be said, gave a formal consent or submission to the Magistrate's selection by signing their names to a document of that tenor (*uke-sho*) at the time of the announcement. The duties of the ward

elder were to manage the executive details of the ward's affairs, and particularly to make known the Magistrate's proclamations and to supervise the income and expenditure for local purposes. Here the wardsmen's directions, as expressed at an assembly, must be carried out. The compensation of the elder consisted in an exemption from one unit of the local taxes and, in some wards, a fixed amount as a present at a stated time; but there were always extra gifts of no regular amount at the New Year and at other times.

Under the elder was a small staff of one or two assistants, with some servants, appointed by the elder himself. There were also in each ward two or three financial officers (*kanjo-kata*) and directors (*tsuki-gyoji*), who were elected by the wardsmen and were more or less subordinate to the elder. Neither class received any salary; and the *tsuki-gyoji* took turns in serving monthly. Finally, below all, were the five-men companies, each with its chief, whose seal was necessary in all important transactions concluded by any member of the company. There is little information at hand concerning these companies in towns. Professor Komiyama affirms that there were two separate series,—companies of tenants and companies of house-owners and their agents, the former being known as *mise* (shop,—hence, tenant of a shop)-*goningumi*. But this was almost certainly not so in Osaka, and I have seen no evidence of it in Yedo. In Nagasaki there was a single series, but it included proprietors only.

In Yedo also we find the system of double Magistrates; that is, two persons occupying the office of Town Magistrate and serving alternately every month. It is evident that this arrangement was made in pursuance of the plan, so often exemplified, of checking one official by another. It was especially necessary to guard the Yedo Town Magistracy in this way, for the civil governor of the feudal capital was in a position to

secure very dangerous power. But the exact workings of this device it is not easy to learn. It seems hardly possible that each Magistrate could have retired completely from official activity for a month. Moreover there were two permanent offices, the North and the South, and it seems that there was a permanent staff at each, and that the same office was always used by the same Magistrate.[1] It is difficult to imagine how the judicial business was conducted if suitors were obliged to keep in mind the months set apart for the different Courts, and if suits were required to be suspended in alternate months. Finally, the communications between the staffs of the two Courts show that there was independent action by each Magistrate and an independent set of records. On the whole, it seems probable that the ordinary administration of local justice went on as usual, and that the alternation affected only the general police supervision of the city and the functions of the Magistrate as a member of the Chamber of Decisions, the Appellate Court; while in all important matters there was in any case concert of action.

Under the Magistrates was a staff of *yoriki* and *do-shin*, organized into bureaus as at Osaka. Each of the Magistrates had some 25 *yoriki* and 150 *doshin*.

The *yoriki* were in 6 classes or ranks,—managers,[2] sub-managers,[3] chief assistants,[4] sub-assistants,[5] ap-

1. For a long time the number of Magistrates varied,—sometimes one, sometimes two. In 1702 there were three, with an Office for each,—the South, North, and Middle Offices. In 1719, when Oka and Nakayama took the position, the number was fixed at two, and remained so until the unsettled times attending the fall of the Shogunate, when two others were added. The Office was known as *bansho* (watch quarters), because in the early days a guard of soldiers was kept there. The dual Offices dated from 1719, and they were situated (since 1800), the North Office, inside the Gofuku Gate, and South Office, inside the Sukiya Gate. 2. *Shihai.* 3. *Shihai-nami.* 4. *Hon-zutome* (service). 5. *Hon-zutome-nami.*

prentices,[1] and unpaid apprentices.[2] The *doshin* were of 11 ranks,—elders,[3] extra-elders,[4] sub-elders,[5] clerks,[6] sub-clerks,[7] extra-clerks,[8] extra-sub-clerks,[9] chief-assistants,[10] sub-assistants,[11] apprentices,[12] and unpaid apprentices.[13] The bureaus were: Yearly Supervision,[14] Trials,[15] Town-Management,[16] *Shacho*,[17] *Reikwai*,[17] Daily Watch,[18] Honjo-district Inspection,[19] *Yosei* Inspection,[17] Prison Inspection,[20] Town-Assembly-Office Inspection,[21] Saruya Ward-Assembly-Office Inspection,[22] Old-Copper-smelting Inspection,[23] Rice-storing Inspection,[24] Hakodate Assembly-Office Management,[25] Saltpetre Assembly-Office Management, and Fire-extinguishing-service Inspection.[26] To these were added half a dozen minor ones, consisting of *doshin* only. The office of *doshin* and *yoriki* (called a "possession"[27]) was held for life only; but usually the son stepped into his father's place.

The principal town officers of the people themselves were the Town-Elders[28] (corresponding to the Osaka Chief Elders) and the headmen[29] (corresponding to the Osaka ward-elders). The chief business of the former was the promulgation of the Magistrate's regulations, the supervision of the headmen, and the reception of petitions, reports, etc., from the people for transmission to the

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1. *Mi* (see)-*narai* (learn). 2. *Fusoku minarai*. 3. *Toshiyori*. 4. *Mashi-toshiyori*. 5. *Toshiyori-nami*. 6. *Monokaki*. 7. *Monokaki-nami*. 8. *Soye-monokaki*. 9. *Soye-monokaki-nami*. 10. *Hon-zutome*. 11. *Hon-zutome-nami*. 12. *Minarai*. 13. *Fusoku-minarai*. 14. *Nemban-kata*; the "yearly" officer was usually higher than the monthly officer. 15. *Gimmi-kata*. 16. *Shi-chu torishimari-gakari*. 17. Unknown. 18. *To-ban*. 19. *Honjo mi*(see)-*mawari* (going about). 20. *Roya-mimawari*. 21. *Machikwai-sho mimawari*; see *infra*, "Taxation." 22. *Saruya machi kwaisho mimawari*; see Part III, p. 169. 23. *Kado-fukisho-mimawari*. 24. *Taka-tsumi aratame*. 25. *Hakodate* (a port in the northern island)-*kwaisho-gakari*; any place where a body of officials met might be termed a *kwaisho*. 26. *Machi-hikeshi-ninsoku aratame*. 27. *Kakaye-ba*. 28. *Machi-toshiyori*. 29. *Nanushi*.

Magistrate. Ever since the period Tensho (1573-1591) their number had been 3, and the office became hereditary about that time.[1] The city was divided into 3 parts,—North, Middle, and South, and it is said that they managed the city affairs monthly in turn; but what the arrangement was does not appear. Their compensation consisted in the income of several plots of residence-land (each getting some 500 or 600 *ryo* annually, a large sum for the times), together with a few other perquisites, and the rights to use the family name and to appear at the Shogun's Court.

The headmen date their origin to an even more remote period, that is, probably to the time when Yedo was still a country village in the early part of the 16th century, and the Tokugawa family had not yet made it their headquarters. They appear to have been known sometimes (as late as Keian, about 1650) as *kimoiri*, a term which meets us in later times (for such an office) only in Sendai and a few other places. It seems that, as in Osaka, many *cho* (or wards) had no headman, though this was probably not as common in earlier times as in later. A headman might have in charge from 1 to 25 *cho*. About 1725 the number was some 265 in all. The headmen had early grouped themselves into companies (*kumi*) arranged by localities,—the Kanda company, the Nihonbashi company, etc. But later (probably about 1725) the Magistrate had them grouped by numbers into 21 regular companies,—1st, 2nd, 3d, etc., with two other special ones. Three of these acted as distributors of the proclamations transmitted through the Town Elders, and took yearly turns in office (*ko-guchi nenban nanushi*). There was also another grouping which seems to have included two or more in each of the local companies, a grouping according to the nature of the special work assigned to each one. At first this grouping included

1. They were known as the *san-toshiyori* (three elders).

only a number of headmen deputed to supervise sundry affairs (*shoshiki-gakari*) demanding united action. Afterwards the groups were increased and seem to have taken in the entire body of headmen, each having some special subject of concern in addition to the supervision of local affairs in his *cho*. This classification (as it obtained about 1840) was as follows: Town Management[1] (48 men), Miscellaneous Affairs[2] (50 men), Registration,[3] Rice,[4] Imported Wine,[5] Books and Illustrated Periodicals,[6] Tubmakers' Taxes,[7] Town-Assembly-Office,[8] and a few others. The headman might not carry on a trade, unless specially permitted. His salary varied from a few *ryo* up to 300 *ryo*, apparently according to the size of his district. He also took as a perquisite the fees for registering transfers of land, known as *bu-ichi-kin* (percentage-money). These made in all no inconsiderable sum, and were in fact the subject of much complaint by the people.[9] The office was hereditary, though if no heir was left the householders of the district selected some one and obtained the Magistrate's sanction. But it had none of the prestige of the Town Elders, although towards the end of the Shogunate a number of headmen were for meritorious services given the privilege of using the family name and wearing two swords. There were, however, certain social distinctions between the different families of headmen. Highest in standing came the pioneer headmen,[10] who had been the original settlers in the ward or had come there with the Tokugawa family; next, the "headmen of old wards,"[11] who had lived in that

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1. *Shi-chu tori-shimari-gakari.* 2. *Shoshiki-tori-shimari-gakari.* 3. *Nimbetsu-gakari.* 4. *Komekata-gakari.* 5. *Sake-nyushin-gakari.* 6. *Yezoshi-oyobi shomotsu-gakari.* 7. *Okedaru-zakusen-gakari.* 8. *Machikwaisho-gakari.* 9. See *infra*, under "Taxation." 10. *Kusawake* (undergrowth-dividers, i.e. pathfinders)-*nanushi.* 11. *Furumachi-nanushi.*

ward time out of mind; then the "common headmen,"[1] whose wards were settled in recent times by removals from the adjacent country; and finally the "gateway headmen,"[2] whose wards were lands lying near temples and owned chiefly by the priests. The position which these last wardsmen occupied (for of course these ranks were more or less applied to the individual wards as well as to the headmen) may have been due to the fact that they paid rent to the temples, whose lands were exempt from taxes, and thus, not sharing in the burdens of their fellow-townsmen, were less esteemed by the latter. The "pioneer" and "old-wards" headmen had the privilege of appearing at the Shogun's Court, like the Town Elders.

The wards without headmen were not unprovided for, for a sub-headman, known as *tsuki-gyoji* (monthly director) was appointed. This official was apparently selected from the resident householders, and served in his turn monthly. The total number varied, but about the year 1800 it was 109. The same title was applied to the monthly directors of the guilds, and it is sometimes difficult to know which is intended.

In Sendai also the double Magistracy was employed. The Town Magistrates originally transacted in their own mansions the business of the position, taking their turns monthly; but afterwards two Offices were built, and they then occupied these, each in turn presiding, and always at the same Office. The preliminary examination of criminals, however, was held at the Magistrate's residence. Each Magistrate had a small staff of *monokaki* (clerks) and *yokome* (inspectors), who corresponded probably to the *yoriki* and *doshin* of the Tokugawa administration. The city was divided into 24 wards, over each of which was a *kendan* (bailiff) and a *kimoiri* (headman). The *kendan* seems to have

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1. *Hira* (common, in the derogatory sense)-*nanushi*. 2. *Monzen-nanushi*.

been more closely connected with the Magistracy than the *kimoiri*. His functions were the assessment and collection of certain taxes, the management of family-registration and land transfer, and the censorial supervision of the ward-elders and the head company-chiefs. The *kimoiri* assisted him in all these duties. In each ward there were from 1 to 3 ward-elders (*machi-toshiyori*), who attended to local taxation and were the medium of communication between the people and the higher officers. In a large ward there was also a head company-chief (*jo-kumi-gashira*), who assisted in sundry matters of local administration. There was one such person for every 30 houses. Under all were the five-men companies, each with a chief. But here each member of the company took turns, yearly or half-yearly, as its chief. All these officers were appointed and discharged by the Magistrate, except the company-chiefs, and even in that case there was probably some interference from above. But it would seem that the offices were held at least for life. The salaries of the *kendan* and *kimoiri* consisted in one-third of the income from certain houses given them by the lord of the fief; though the amounts varied in different districts. The ward-elders and head-company chiefs received no salary, but were exempted from all taxes.

In Nagasaki,[1] there were in fact only two Magistrates exercising power; a third belonged to the office, but for two years each one by turns retired to Yedo, leaving only two in control at any one time. The *toshiyori* here were 4 in number, and their offices were hereditary. According to Kaempfer they had before 1683 been chosen by the people of the town and invested with rights of tax-

1. All references to Nagasaki in these pages are founded on Kaempfer's account. His minute description of local order in Nagasaki is well worth reading for the vivid picture it gives of life in a Japanese city two centuries ago.

collection; but about that time they suffered, in common with the popular officers of other Shogunate towns, a great diminution of privileges. Attached to the *toshiyori* were two sets of officers, the *josoji* and the *nengyoji*, who had a partly representative character and were taken from among the headmen of the wards. These wards, 87 in number, each had a headman (here called *otona*), whose duties were the same as elsewhere. There were also in each ward 3 *o-kumiyashira* (head company-chiefs), to assist the headman; a *hisha*, or public secretary and notary taking charge of proclamations, passports, certificates, registers, etc.; and a *takura-kaku* or treasurer. The *gonin-gumi* (five-men companies) existed here as elsewhere; but only proprietors were enrolled in them; renters were excluded.

This outline, brief and lifeless as it is, must suffice as an introduction to the topics of local administration constantly alluded to in the ensuing Parts. With the subject of local administrative methods are intimately connected three others, which may best be taken up in this place, before going on to the description of commercial methods,—the religious organization, the administration of justice, and the tax system. We come, then, to the

3. *Religious Organization.*[1]

Every temple must belong to either the Shinto or the Buddhist cult. Of the former little need be said here. The Shinto belief is of great importance in the study of

1. As yet we know but little of the real religious life of the Japanese; but fortunately Mr. Lafcadio Hearn is now making a special study of religion in connection with local life. It is a little singular that the person who of all sojourners in Japan has expressed himself in the most pronounced manner against the mission system should be the person best informed on Japanese religion.

local social life and of folk-lore, but it had few relations with law and administration. This was due in large part to the lack of administrative organization within the cult itself. There seems to have been no hierarchy, in the full sense of the word. There was a Government director, and there were chief temples at Ise and at Idzumo, the centres of religious patriotism. But the local temples (not including the wayside shrines without incumbents) were held as benefices by particular families, and their inter-connection seems to have been slender. The *uji-gami* or patron deity of a locality was probably in the beginning the deified ancestor of some noble family of early times, and the temples still continued to be in the patronage of that family. In the Tokugawa dominions the *kannushi* (deity-master) or incumbent must have possessed a certificate from the family owning the advowson.

In the Buddhist cult we find a number of sects having a complete (though by no means uniform) organization embracing the lowest and highest temples in one administrative system. A priest might rise from a humble parish temple to be chief of a whole sect. The parish priest of Buddhism, like the Roman Catholic priest, was an important figure in village and family life. His presence was sought on all the important occasions of life,—birth and death, local and national festivals. As the keeper of the sect-register (to be described later) he had a supervision over the affairs of every family. Every villager must belong to some sect, and no one could change from one to another without good reason. If the conduct of the priest was oppressive or otherwise improper, the parishioner might apply to the authorities for leave to change: and if a new temple was established, the villages were free to join it if they wished. But the establishment of new temples was discouraged, and no gifts of land could be made to any unauthorized temple. The support of the temple was

derived partly from the money gifts made by its parishioners (that is, on festival-days, and on the occasion of death, etc., when the services of a priest were needed), but chiefly from the land owned by the temple and hired out to the villagers. These titles could often be traced back hundreds of years, and were usually pious offerings of parishioners who had bestowed (*kifu*) them on the temple in payment for prayers to be made on their behalf. If these possessions were large, there were regular tenants,—known as *monzen-hyakusho* (gateway-farmers), because the land usually lay near the temple. If the land was scanty, it was let to this or that farmer to cultivate in addition to his own land. It seems, too, that sometimes the whole village performed annually a certain stint of work in the cultivation of the temple lands.

The control of the temple property was by no means entirely in the hands of the priest, as appears in Part V. But just what relations existed between priest, parishioners, and Government as to the disposition of temple-property is a difficult question. The Tokugawa Government had always kept a watch over the temple treasures,—the portable articles, which were owed chiefly to the benefactions of Emperors, *daimyo*, *samurai*, and commoners. A rule existed by which an annual inspection of certain important temples and a registration of their possessions was to be made by the Shogun's commissioners. In 1738 a proclamation was issued, prohibiting his pawning or selling of images, votive offerings, utentels, and other movables. The understanding of the present time as the customary conception of the relations of the parishioners to the temple may be gathered from the law of 1878, which divides temple property into two classes, common and special; the former may as a rule be sold only with the written consent of the priest and all the parishioners; the latter—embracing the *homotsu*, or valuables, such as censers, paintings, etc.—may be sold under the same formalities, but only when

it is absolutely necessary in order to preserve the existence of the temple.[1]

But there was, in the Tokugawa dominions at least, a distinction between ordinary parishioners and *kaiki*, or founders, and their successors. The latter alone (and we may suppose that they included also those who had made donations of land to the temple) could have a voice in the election of a parish-priest, when the office became vacant. In some, if not in all sects, this custom of choosing by the voices of the people (*nin-sen*) prevailed. Their choice was, however, much restricted by what we probably must call custom or habit rather than law or regulation. Moreover only the small temples had parishioners possessed of vested rights. The larger ones were endowed so well by nobles that they were independent of their congregation. The only eligible persons, of course, were those who were already devoted to religion, and among them, it seems, those only who had a religious relationship (*ho-rui*) with the predecessor. Just as every individual must belong to a family, just as every artisan must either belong to some master-artisan or be himself a master-artisan, so every priest must be united in some religious relationship. Out of these religious relatives (the predecessor's own disciples or, it would seem, co-disciples of a common master) the successor must come. The rules varied in the different sects. In the Shin sect, for instance, where marriage was allowed, the successor would probably be the natural or adopted son; and in that sect promotion to the higher offices was hence a slower and more uncertain matter. Moreover the sanction of the district or chief temple was always necessary.

Every sect had its chief temple (*honzan*)— most of which were in Kyoto—and its vice-chief temples

1. For a few further notes on the present aspect of this question, see an article by the writer in "The Nation," April, 1892.

(*chu-honzan*), controlling large districts of country. The *kumiai-dera* (district-temple) seems to have been the leading temple of a still smaller district. For these districts and for the general affairs of the sect there were various administrative officers. The most important in legal affairs was the *fure-gashira* (proclamation-chief), who seems to have had charge of legal disputes before they were brought before the Temple Magistrate, and to have supervised the publication and enforcement of the latter's proclamations. The same term was applied to certain officers having a supervision of the blind, the beggars, the outcasts, the fortune-tellers, the strolling players, and other itinerant persons not regarded as belonging to the class of ordinary commoners. The *fure-gashira* was in effect a subordinate of the Temple Magistracy; but he had very intimate relations with the temples. There was one at every temple of any size, though he was not under the control of the incumbent of the temple. He seems in part to have had the function of the *metsuke* (censor or inspector), and to have acted as a check on the priests of the temple. At the *honzan* (chief temples) themselves there were two systems of administration, doubtless sometimes found mingled. By one the officers were all priests, taken from the leading ones in the temples of secondary importance. The ascent to this position was gained largely by seniority of rank. Seniority depended chiefly, though not entirely, on age,—that is, on one's religious age or *horo*. If a man went into the priesthood at the age of 18, then when he was 40 years old his *horo* was 22. Where two priests of the same sect met, their relative rank was determined by their respective *horo*, unless special merit, as shown by mastery of the doctrine or otherwise, had gained for one a particular increase of rank; but between priests of different sects the *horo* alone governed. The organization of officers was somewhat similar to that of the Government to-day,—a chief

priest, chiefs of departments, heads of bureaus, etc. The chief priest was at the head, but his power was by no means an absolute one, and was limited in various ways by the powers of these other officers.

Such was the system of priestly officers. The other system was in outline not greatly different, but the officers themselves (at the *honzan*) were secular persons—that is, *samurai* who held land of the *honzan*. The temple officials were chosen from these retainers, just as the *daimyo* chose their chief seneschals (*karo*), etc., from their leading vassals. Such, for instance, was the organization of the Hongwan Temple in Tsukiji, Yedo,—where even to-day the broad moat on two sides and the tall stout walls completing the square still convey an impression of the military ways of the great temples in the Tokugawa days. In the earlier times of the 16th century, indeed, the temples had possessed vast feudal estates and maintained large bodies of knights. In one or two of the precedents in Part III we find the Hongwan Temples appearing by their *kerai* (retainers), and claiming the privileges of *daimyo* in this respect.

The chief importance of the temple in its local relations was its function as the registry-office for the families of the ward or village. Every family was required to be registered in full at some temple. This is sometimes said to have originated in a measure of the third Tokugawa Shogun, Iyemitsu, about 1630, when he brought about the final extirpation of Christianity. But there was a registration system in Japan more than a thousand years ago, and it is likely that the measures of Iyemitsu were merely a part of the general reorganization effected under the first and third Tokugawa Shoguns, by which many of the institutions which constant war had weakened were restored and strengthened. The prevention of Christian propagandism was of course greatly aided by this temple-registry system; but we

must regard this as only one of its functions. There were apparently three principal documents connected with this registry. One was the certificate which each family possessed; another was the general register; and a third was the annual summary sent to the *daikwan*. The names were respectively *ka-shu* (family-sect) *shomon* (instrument),[1] *shumon-cho* (religious-sect book) or *nimbetsu* (persons' difference)-*cho*, and *nimbetsu kakiage-cho*. But there can be no doubt that these terms were loosely and interchangeably used, as Parts II and V show. There was also a certificate which the headmen handed up every year (presumably at the time of revising the temple-register), enumerating the families and their members, and certifying that there were no Christians among them. As these documents picture accurately the religious affiliations of the people, I give the first and last portions of one of them, the original of which is now before me:

"Tenna, III, 3 (1683).

. . . . . We have been ordered to make an investigation as to the existence of Christian believers, and we have made it, including all from householders and house-renters (counting men, women, children, and servants) to priests, *yamabushi*,[2] *gyo-ja*,[3] *komuso*,[4] bell-strikers,[5] outcasts, and beggars. But we have not found any believers of that faith, and we are positive that there are none. * * * * [The list of persons is as follows:]

The family of *Yagoyemon*:

Yagoyemon is 30 years old, a parishioner of Anraku Temple, of the Zen sect in this village; was born in the village, and his family have been farmers here for generations.

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1. Or *tera-ukejo* (temple-certificate). 2. A kind of wandering priest, who begged alms. 3. A sort of hermit. 4. One of a class of *samurai* outcasts. 5. Probably disciples in the temples.

His wife is 29 years old, a parishioner of Anraku Temple, of the Zen sect, in this village, and a daughter of Kanya, a parishioner of Yemman Temple.

His daughter *Tatsu* is 8 years old, living at her father's house, and is a parishioner of Anraku Temple.

His boy *Semmatsu* is 4 years old, living in his father's house, and is a parishioner of Anraku Temple.

His maid-servant *Man* is 20 years old, a younger sister of Saburoyemon, in Nakadate village, Naka *kori*, and is bound to Yagoyemon for 3 years (year of the Dog to year of the Ox), and is a parishioner of Joko Temple, in this village; her surety-document states that her surety has a temple-certificate, which we can produce if desired.

Another maid-servant, *Fuki*, is 21 years old, a daughter of Heiyemon, of Misawa village, Kawachi *kori*, and is bound to Yagoyemon for 3 years (year of the Dog to year of the Ox), and is a parishioner of Joko Temple, Zen sect, in this village; her surety document states that her surety has a temple-certificate, which we can produce if desired.

Another maid-servant, *Kesa*, is 15 years old, a daughter of Kinyemon, of Ochi village, Kawachi *kori*, and is bound to Yagoyemon for 5 years (year of the Dog to year of the Hare), and [her family] have been parishioners of Joko Temple for generations; her surety-certificate states that her surety has a temple-certificate, which we can produce if desired.

His man-servant *Shimazo* is 19 years old, and is a parishioner of Joko Temple.

Another man-servant, *Ichirobei*, is a son of Ichiyemon of Otsugoro village, Naka *kori*, and is bound to Yagoyemon for 2 years (year of the Dog to year of the Rat); he is a parishioner of Joko Temple and his surety-document states that his surety has a temple-certificate, which we can produce if desired.

Another man-servant, *Moyemon*, is 47 years old, a son of Shichiyemon, and is bound to Yagoyemon for 3 years (year of the Cock to year of the Rat); he is a parishioner of Joko Temple, and his surety-document states that his surety has a temple-certificate, which we can produce if desired.

* * * * *

The total number of the above persons is 176; 84 men, the rest women. There are 8 other persons, not included in the above, who are married to families in other villages, but without a formal ceremony.[1]

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84 of the above persons are parishioners of this Church; if any take up the Christian faith, we will investigate the case and persuade him to give up his error.

We certify to this.

Joko Temple, Zen sect of Gokurakuji village, Naka *kori*.

13 of the above persons, etc., etc.

We certify to this."

Hokyu Temple, Zen sect, Usari village,[2] Naka *kori*.

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1. The above is written by the headmen; now follow the certificates of the different temples. 2. This seems to be a case where different groups of houses were known as *mura* by distinctive names, though all included under one larger *mura* as an administrative district.

48 of the above persons, etc., etc.
We certify to this.
Anraku Temple, Zen sect, Jutenji village, Naka *kori*.
10 of the above persons, etc., etc.
We certify to this.
Rinsho Temple, Zen sect, Narushima village, Naka *kori*.
14 of the above persons, etc., etc.
We certify to this.
Ryosen Temple, Hokke sect, Narushima village, Naka *kori*."

Intertwined with the ordinary local administration and inseparable from it was the

4. *Administration of Justice.*[1]

In Puchta's "Outline of the Science of Right" occur the following passages:

"The relationships of Rights are the relations of one man to another, and may be called legal relations. But the various human relationships do not enter, in their full extent, into the sphere of Right, because the legal notion of a person rests upon an abstraction and does not embrace the whole being of man. There must, therefore, occur much modification and subtraction before we reach the special relations which alone are involved in the idea of a

1. Some of the following passages are taken, by permission of the editor of the "Green Bag," (Boston), from an article by the writer in that magazine for September, 1892.

Right. Thus, suppose a man has arisen from a protracted illness, and in order to pay the bill of his physician, to provide for the urgent wants of his family, due to his recent incapacity, and to procure the means of beginning business again, he goes to a well-disposed neighbor, whom he has helped in former times, and obtains a loan at the usual rate. How much of all this must we not leave out in order to ascertain the purely jural relation between the parties! Compare with this the case of the rich man who raises capital merely to add to his possessions by a new speculation, and consider the effort of abstraction which is required in order to assimilate the resulting legal relations. And yet the legal relations in these two cases are identical."

For the Anglo-Saxon lawyer, accustomed as no other is to do homage to strict legal principle as in and for itself the *summum bonum* of law, and to regard legal justice as manifesting itself only in a science of unbending rules, this quotation will indicate better than anything else the great gulf that is fixed between his own system and that which was indigenous to Japan. By making generalizations into hard-and-fast rules, by strictly eliminating in individual cases a variety of important moral considerations (much as certain English economists worked out their science with respect only to the wealth-acquiring motive), the Anglo-Saxons have succeeded in creating a special type of justice. This tendency of theirs is so strong that English Equity, the one great effort to counteract it, has become in the end identical in these respects with the whole system.

Yet there are peoples to whom this type of justice is utterly alien. Even on the Continent this impersonalization (if we may so call it) of justice has never reached such an extreme. For example, the French Civil Code has a "*délai de grâce*," which the court may accord to a debtor whose misfortunes render inequitable the immediate enforcement of a claim in its entirety, but it is in Japan that we may find the extreme antithesis to the Anglo-Saxon

conception of justice. Whether there is or not any practical lesson for us in studying this opposite type, is a question which cannot here be taken up. However this may be, the chief characteristic of Japanese justice, as distinguished from our own, may be said to be this tendency to consider all the circumstances of individual cases, to confide the relaxation of principles to judicial discretion, to balance the benefits and disadvantages of a given course, not for all time in a fixed rule, but anew in each instance,—in short, to make justice personal, not impersonal. It would not be fair to infer from this that the courts of old Japan could have been no better than the tents of an Arab Sheikh, where justice came roughly and speedily, and the good sense of the tribunal was the only measure of equity. On the contrary, there was in Japan, as the ensuing volumes show, a legal system, a body of clear and consistent rules, a collection of statutes and of binding precedents. But whether it be or not a mere mark of primitive legal development, there was always the disposition to take, as Puchta puts it, "the whole being of man" into consideration, to arrange a given dispute in the most expedient way, to sacrifice legal principle to present expediency. This is the first notable characteristic.

The second is that Japanese justice was essentially feudal in its spirit. At every step this quality shows itself. Chiefly affected by it, of course, was the criminal law. The common people necessarily came in for a meagre amount of respect in the feudal polity, except as wealth-producing instruments, on whose effectiveness the subsistence of the military class depended. They were restricted and punished with a severity characteristic of feudalism everywhere. The features of their status and the kinds of punishments were not substantially different from those of European nations at similar stages of social development. On the civil side the result of feudalism was that the dispensing of justice between disputants appeared as a boon from the lord to his

suppliant subjects. The first duty of the faithful commoner was not to disturb his lord's peace and waste his own time by becoming involved in a dispute. A litigious community was the worst of evils. An obstinate plaintiff, even with a just cause, might fare in the end not much better than the defendant. A good example of this, in high life, was the dispute over the succession to the fief of Echigo.[1] The incumbent *daimyo*, Mitsumaye, was childless, and one of the two seneschals intrigued with the lord's brother, Nogayashi, to have the son of the latter adopted as heir to the title and the fief; while the other seneschal used his efforts against this step, and to gain his purpose brought the matter to the attention of the Shogun. The latter looked upon the inability to come to an agreement as seditious and dangerous in its tendencies, especially in a quarter where only the example of peace and smoothness should be set; and the decision was that the *daimyo* and his brother should be exiled, with the complaining seneschal, while the other intriguer was to be put to death and the fief confiscated. No doubt a jealousy of the power of this large fief was one of the elements in this particular decision.

The spirit of feudalism entered largely also into procedure. There was a great deal of learning as to summons, writs, and appearances; and in these matters the military gentry (and the priesthood shared these privileges in part) were exempted from some of the ordinary requirements. The commoners were to assume the most abject attitudes in the august presence of the judge. I have been told that one of the reasons why the mercantile classes resorted little to the courts in their disputes was the necessity of humiliating themselves so deeply in their quest for justice,- of crawling, for instance, on hands and knees from the door of the court to the judgment-room. This is somewhat overdrawn, however, and was probably true only

1. Mentioned by Rudorff, in "Rechtspflege under den Tokugawa."

of the haughtier merchant-princes or money-lenders, who could have bought out a *daimyo*, had their birth permitted them, and could not bring themselves to cringe to men in petty authority.

In the initial stage of a dispute we find that justice was attained not so much by the aid of the law as by mutual consent. Customs there were, and definite ones; but they were always applied through arbitration and concession. This feature of the jural life of the nation is not without its parallel among other Oriental peoples; but I fancy that it is here peculiarly pronounced, and it is worth dwelling upon. I have spoken of the marked disposition to make justice personal, to let many external considerations enter into the settlement of a controversy. The exigencies of mercantile life reduced this disposition in towns to a minimum; and it attained its greatest influence in the country. But, joined with this, perhaps even more powerful and deeper rooted in the character of the people, was the tendency to conciliation, to make everything smooth,—a tendency which is still, it may be suggested, the best key to much of the Japanese character. Not to attempt too much refinement of analysis, it may perhaps be laid down that a chief quality of that character is not so much a predominance of the emotional nature as the comparative weakness of the will. A consequent disinclination to act, a desire to avoid obstacles, to make things as easy as possible, explain many traits. The fierce determination to do, which Anglo-Saxons know so well, is wanting. The leisurely way of carrying out an undertaking, the lack of a power, as some one said of Cecil, Lord Burleigh, to "toil terribly," the shrinking from physical violence,—these seem to point back to the quality I have named. The perfection to which the art of politeness has been developed, the opprobrium which rests upon loud, violent, rough, uncouth, agitated behavior, is equally suggestive, and flows from a worship of tranquillity and smoothness in social intercourse. The commonest coolie is more

courteous to the friend who passes him on the street than is the prosperous American merchant. In numberless ways a Japanese will put up with annoyance and even positive abuse of his rights, without thinking it worth while to do more than politely protest. If we can imagine the exact contrary of the spirit inculcated by the late Prof. von Ihering in his "Struggle for Rights," we shall understand the Japanese spirit. Even the disregard of truth sometimes complained of by foreigners in Japan is perhaps at bottom (so far as it may be more noticeable than in the West) politeness and the dislike to offend carried to an extreme. Many of us can testify to promises made with full knowledge of inability to perform, to fibs told where the truth would have done no real harm, and to other incidents equally annoying and equally contrary to our ideas of good faith. The simple explanation is that, rather than say to your face what he knows will be unpleasant, your Japanese friend has stated or promised what he thinks you would like to hear. This thought is perhaps not consciously present; but heredity and tradition have made such a course instinctive with him. After one has discerned by experience, it is easy to make allowance for this disposition, and between persons to the manner born it perhaps causes no more inconvenience than does our conventional "not at home." I do not for a moment say that the incidents I have referred to are of every-day occurence in Japan. I suggest merely that the spirit of regard for the feelings of another which prompts us to say "not at home" to an acquaintance, rather than announce that we are at home but (impliedly) do not care enough for him to see him, is much more powerful in Japan than with us, and receives a more frequent practical application. It is probable that a Japanese would seldom be deceived in such cases, just as in our own cities the conventional "not at home" deceives no one. Another characteristic, kindred to all these, is the general peaceableness and happiness of society in

Japan. One can see in New York in one night such exhibitions of violence, brawling, and abandoned lawlessness as one would not see in an entire year in Tokyo. Poverty and want are nowhere accompanied by such tranquillity and sobriety as in Japan. These are all more or less direct manifestations of a deep-seated opposition to whatever implies clash, clatter, shock, roughness, strain, in any shape, and an inclination to make everything quiet, smooth, easy, harmonious. In short, the Japanese are confirmed quietists. If I have seemed to digress in illustrating this, it is because this quality in one of its manifestations had so great an influence on the administration of justice.

The result, then, was a universal resort to arbitration and compromise as a primary means of settling disputes. It was, and to a great extent still is, an ingrained principle of the Japanese social system that every dispute should, if by any means possible, be smoothed out by resort to private or public arbitration. The machinery of local government, under the old regime, was employed for this purpose, if friendly mediation failed; but no efforts were to be spared to settle the matter in this way, and in practice the vast majority of disputes were so disposed of. It is true that the interests of the feudal aristocracy in preventing turbulence and open quarrels among the common people led them to foster the disposition to arbitrate, and such a procedure was enjoined by law. But the legislation was only cumulative in its effect, and was probably intended to stem a tendency, perhaps in towns, to break away from the old customs. The consequence was that even where a lawsuit ultimately resulted, a long stage of negotiation had invariably preceded, and it was (in the rural regions) only an irreconcilable difference that ever reached the seat of judgment in Yedo.

The principle of arbitration resulted thus:[1] "In case of a disagreement between members of a *kumi*, the five heads

1. Quoted from Dr. Simmons.

of families met and endeavored to settle the matter. All minor difficulties were usually ended in this way. A time was appointed for the meeting; food and wine were set out; and there was moderate eating and drinking, just as at a dinner-party. This, they thought, tended to promote good feeling and to make a settlement easier; for everybody knows, they said, that a friendly spirit is more likely to exist under such circumstances. Even family difficulties were sometimes settled in this way. Thus, if a man abused his wife, she might fly to one of the neighbors for protection, and, when the husband came to demand her, the heads of families in the *kumi* would meet and consult over the case. If a settlement failed, or a man repeated his offence frequently, he might be complained of to the next in authority, the chief of companies; or else the neighbors might take matters into their own hands and break off intercourse with him, refusing to recognize him socially. This usually brought him to terms. An appeal to the higher authorities was, as a rule, the practice in the larger towns and cities only, where the family unity was somewhat weakened, and not in the villages, where there was a great dislike to seeking outside coercion, and where few private disagreements went beyond the family or the *kumi*.

"A case which could not be settled in this way was regarded as a disreputable one, or as indicating that the person seeking the courts wished to get some advantage by tricks. In arranging for a marriage-partner for son or daughter, such families as were in the habit of using this means of redress were studiously avoided. It was a well-known fact that in those districts where the people were fond of resorting to the courts they were generally poor in consequence. The time spent and the money lost reduced the community to poverty.

If even the company-chief could not settle the matter, it was laid before the higher officers, the elder and the headman. In fact, the chief village officers might

almost be said to form a board of arbitration for the settlement of appeals; for in deciding the case the headman received the suggestions of the other officers. It was discreditable for a headman not to be able to adjust a case satisfactorily, and he made all possible efforts to do so. In specially difficult matters he might ask the assistance of a neighboring headman. If the headman was unable to settle a case, it was laid before the *daikwan*, who however almost invariably first sent it back, with the injunction to settle it by arbitration, putting it this time in the hands of some neighboring headman, preferably one of high reputation for probity and capacity."

There are in the volumes of Legal Precedents no records of cases other than those reaching the Magistrates; and the following case may serve to illustrate the course of justice under the *daikwan*. The documents come from a *kori* in Kai *kuni* and date back some forty years.

"*Deed of Settlement.*

A few years ago a dispute arose in regard to the possession of a piece of land in Gokurakuji village, producing fifteen bales of unhulled rice, the complainant being Sakurabayashi Samayemon, patron of the Ubata (Shinto) Temple, in Miyawara village, and the defendants being Gantei, chief priest of Anraku (Buddhist) Temple, and Kinrei of Zoko (Buddhist) Temple, in Gokuraji village. This complaint was first brought before Sasaki Michitaro, Esquire, the late *daikwan*, and the defendant filed his answer; but the case was afterwards transferred to Morita Okutarô, Esquire, the present *daikwan*, and the investigation has been going on. In the mean time the persons mentioned below have mediated between the parties, and have brought about the following settlement, which we hereby communicate to the court:—

"The statement of the complainant was that the Shimmei Shinto-temple of Gokurakuji village was from time immemorial an appurtenance of Ubata Temple, in Kiwara village, and under the patronage of the com-

plainant's family.[1] Now, one of the plots, 120 feet by 192 feet, which belonged to this estate, was inundated in Horeki Period (1751-1764), in the lifetime of the complainant's grandfather, and became waste. When the complainant succeeded to the office of patron, he thought the land ought to be by that time reclaimable, and he inquired about it of the officers of Gokurakuji village, in which it lay. The latter evaded the inquiry, though it was often repeated; and the complainant began to suspect that the land had long ago been reclaimed by the villagers, and was being cultivated by them. He discovered, on searching further, that this was true; and that the plot had been divided into three parts, one going to Anraku Temple, a second to Zoko Temple,[2] and a third to the maintenance of the Jizo shrine. The complainant, therefore, prayed for an investigation by the court.

"The defendant's answer was as follows: It is true that there is a plot of land cultivated as above, and not included in the taxable land of Gokurakuji village. But this plot was from Shotoku Period (1097-1099) to Kyoho Period (1716-1736) in the possession of Anraku Temple, having been received from the village to support the temple. The chief priest, Honko, eleven generations ago, on retiring from office, received one portion as a settlement upon him forever; but he removed to join the Zoko Temple, and gave his land to the latter, first apportioning a piece to the Jizo shrine. The latter part was under the charge of the village itself. We were on the point of asking to have this land assessed, when the great inundation came, and it is only very recently that we have been able to cultivate it at all; in fact, it is still mostly meadow.

1. The exact relation of a *kannushi*, or chief priest of a Shinto temple, to the living, is not clear; but the estate of such a person was a sort of advowson in a particular family, with right of presentation to members of that family. 2. In many instances the parishioners cultivated the land belonging to their temple as a contribution towards its support.

"Such was the controversy. Two of the *daikwan's* agents visited the spot, and examined the deeds offered by both parties, and, after long investigation, concluded that the land in question must have been identical with the plot belonging to the Shimmei Temple. But as it has so long been cultivated by the defendants, it must be regarded as in their permanent tenancy. The product of the plot should be divided as follows: Landlord, 5 bales; tenant, 5 bales; taxes, 5 bales. This arrangement has been agreed to, and we beg to thank the court for its kindness. To prevent future disputes, we have executed this deed of settlement.

Kayei, 5th year (1853), 9th month, 12th day.

Complainant.

SAKURABAYASHI SAMAYEMON, Chief priest of Ubata Temple, Miyawara village.

Defendants.

GANTEI, Chief priest of Anraku Temple, Gokurakuji village.

KINREI, Purveying priest of Zoko Temple (by his agent, Gantei).

YEISUKE, Farmer, representing the parishioners of Anraku Temple.

YOSHISABURO, Farmer, representing Zoko Temple.

ASAYEMON, Headman of Gokurakuji village.

TADAHICHI, TAROBEI, Chief farmers of the same village.

SAJIBEI, ISOBEI, representing the small farmers of the same village.

Mediators.

HACHIYEMON, Headman of Futsuka village.

KANZAYEMON, Chief farmer of Otoguro village, (by an agent, as he was sick).

Addressed to

MORITA OKUTARO, *Daikwan.*"

"*Supplementary Document.*

The above settlement having been reached by negotiation of the parties, while the inquiry was in progress by the court, has been accepted by order of Honda, Lord of the Province, and becomes valid. But censure has been passed upon Gautei, one of the defendants, because, while the inquiry was pending he violated the law by thrusting petitions into the sedan-chair of one of the Council of State, as he passed, and of other high officers. We acknowledge the unlawfulness of his conduct, and accept the reprimand. (Signed as before.)"

From the *daikwan* there was usually no appeal, in our sense of the word. The litigants might refuse to accept the decision of the headman and go to the *daikwan*, but with him the case must stop, so far as their own action was concerned. This was, for several reasons, not as unreasonable as might seem at first sight. In the first place the *daikwan* was distinctly a legal official, trained as a judge, not merely as an executive officer, and he was competent to dispense justice according to the law.[1] In the next place, where a case was really difficult, either in its facts or its law, the *daikwan* was accustomed to lay it before his superior, the Finance Magistrate. This method of laying the responsibility on another's shoulders was quite congenial and was doubtless common. It took the place which the appeal holds with us. Moreover, in criminal cases where the severest penalties were proper, the *daikwan* was required to obtain sanction for his judgment. Finally, the litigant could indeed invoke the higher authority whenever there was a distinct miscarriage of justice. The recognized cases for this sort of appeal

1. I have in my possession a complete code of criminal and civil law, of some 600 sections, used by a *daikwan* of the Tokugawa region, and dating back nearly 200 years. It was the *vade mecum* of the *daikwan*.

were two,—first, where an official was charged with corruption; second, where the lower judge had delayed unconscionably the taking cognizance or the decision of a claim; provided in all cases that the claim must be based on personal knowledge, not mere rumor, and must not be preferred for purposes of private profit or revenge. Such an appeal came directly (*jiki-so*) before the Chamber of Decisions, the highest Tribunal, not the Finance Magistrate, and was to be placed in the Complaint-Box (*meyasu-bako, sojo-bako*), hung at the gate of the Court.

In towns having a Magistrate, the suit might be brought as far as his Court, and there it must stop, unless it was referred by him to the Chamber of Decisions, or appeal was made on the ground of denial of justice. The latter, however, I have never heard of in case of a Town Magistrate, and it was by no means a common thing in suits before a *daikwan*, for the appellant would need to have a very good case and incontestible proofs in order to make headway against so powerful a superior as the *daikwan*.

From the *daikwan's* superior, the Finance Magistrate, and from the Town Magistrate, a case might be laid before the Chamber for final determination, if any circumstance rendered it worth while,—a difficult point of law, a lack of precedents, a reform of policy, etc. It speaks well for the spirit of conscientiousness (if we may apply that term) with which justice was administered that voluntary references of this sort to the Chamber were so common. Ordinarily the Chamber was the final repository of all civil litigation and all criminal charges; though whenever public interest was involved or any feudal lord of high degree was affected, it was usual to obtain instructions from the Council of State.

But we have so far traced only two of the streams through which the Chamber might receive litigation. There was still another,—the Temple Magistracy. Under these Magistrates were all the temples, Buddhist

and Shinto, including the priesthood and the residents of their fiefs. Suits between members of the priesthood seem to have been disposed of in the first instance, by certain law officers of the sect (the *fure-gashira*), if both litigants were of the same sect; and an appeal lay thence to the Temple Magistrate. If the litigants were of different sects, it would seem that they could go directly to the Temple Magistrate; and he, like the other Magistrates, might seek the Chamber, if the case seemed to need it.

These Magistrates were the three channels by which litigation from the Shogunate dominions might reach the Chamber. But what of the so-called private fiefs,—the fiefs of the "loyal *daimyo*" and of the lords owing no allegiance to the Tokugawa family except as the representative of the Emperor? I have already said that they possessed more or less administrative and judicial independence. The peace of 250 years was in reality a truce, by which the Tokugawa family, in return for the nominal sovereignty of Japan, gave over to the Southwest and to parts of the North the privilege of exercising almost complete actual control of their own fiefs. In judicial matters there was almost no real interference by the Shogunate in the affairs of these fiefs. Nominally the death punishment could not be inflicted by a *daimyo* without reference to Yedo, and succession-disputes of any consequence in noble families were from time to time settled by the Shogun: but other than this little can be found. Lawsuits between residents of the same fief began and ended within the limits of the fief, and the judicial methods did not differ essentially (however the actual rules of law may have differed) from those of the Shogunate. In the following Parts there are numbers of cases in which the retainer of some feudal lord makes inquiry of one of the Yedo Magistrates as to the disposition of a case coming before the former as a judge; but these seem all to have come from fiefs owing feudal

allegiance ("loyal *daimyo*") to the Tokugawas; and, moreover, even these inquiries are usually termed "private," that is, un-official. It would seem that the Chamber was not acknowledged even in these cases to have jurisdiction as the next Court above the provincial Courts. Probably the latter regarded themselves as subordinate only to the Council of State, the representatives and advisers of the Shogun.

We have now surveyed the different sources from which litigation might take its rise, and the end to which it might come. But we have considered solely the simple case of litigation between persons under the same jurisdiction.

These jurisdictions, it will be seen, were roughly four in number, including respectively the country people of the Shogunate dominions (under the Finance Magistrate), the townspeople of the Shogunate dominions (under the Town Magistrate), the temples (under the Temple Magistrate), and the private fiefs (more or less under their own officers). But provision was also necessary for litigation between parties belonging to different jurisdictions; for this was of no inconsiderable amount. Reduced to its simplest form the principle was that the Chamber of Decisions should take original jurisdiction in all such cases. This principle was sound enough, for of course no one of the Magistrates had authority to summon persons who were out of his jurisdiction. But though the rule may be stated in this general form, there are several qualifications to be made. In the first place, the claim must always have been laid before the headman and arbitration attempted, before the higher authorities were sought; that is, the local judicial functions of the headman and those below him were never suspended. In the next place, the suit was always brought to the Chamber through one of the Magistrates. This institution of the suits "through" the Magistrate always included the filing of the complaint with him and the preliminary hearing of the parties by him or his Trial Bureau; but the summons to the

defendant, first sealed by the Magistrate in question, was again sealed, before sending, by the other members of the Chamber. The Chamber itself delivered final judgment, usually in accordance with the recommendation of the trial Magistrate. Who the trial Magistrate should be was determined by the plaintiff's status; the trial Magistrate was that one in whose jurisdiction the plaintiff was. Thus a Yedo townsman entered his suit with the Town Magistrate,[1] and a countryman in the Shogunate dominions with the Finance Magistrate; while, for the purposes of these suits, all residents of private fiefs were regarded as under the jurisdiction of the Temple Magistrate. Ordinary original jurisdiction in these cases the Temple Magistrate certainly did not have, and he seems here merely to have been given what was left over from the jurisdiction of the other two Magistrates. But there is a third qualification to make as to the original jurisdiction of the Chamber. In the central-western regions its functions were delegated, chiefly to the Osaka Town Magistrates, sometimes to those of Kyoto and other places. A suit, for example, by a resident of one of the private fiefs in the extreme West against a resident of Osaka would come before the Osaka Town Magistrates, and final judgment might be rendered by them.[2] The term "delegated" seems proper for these functions of the Osaka Magistracy; for the latter certainly referred to the Chamber for final judgment and instructions from time to time, and several instances occur of the regulation of Osaka practice by the Chamber of Decisions. The Chamber, therefore, seems still to have been the supreme tribunal, and though its powers of original jurisdiction were in the above cases delegated to the Osaka and other Town Magistrates, the controlling power was never separated from the Chamber.[3]

1. Residents of other towns having Magistrates were in this respect regarded as under the jurisdiction of the Finance Magistrate. 2. This arrangement was not perfected until 1781; details will be found in No. 48 of Part III, Section I. 3. This whole subject of the

Nothing has as yet been said about the constitution of this Chamber of Decisions, the supreme tribunal of justice under the Council of State. A few words, then, first as to its origin, and, next, as to its organization.

The *Hyojosho*, or Chamber of Decisions, dates no further back than the 17th century. It had its predecessors, of course[1]; but the political system had been greatly disorganized by the wars of the 15th and 16th centuries, and when Iyeyasu consolidated the Government at the beginning of the 17th century, reconstruction was necessary on all sides. His supreme tribunal (or rather, that of his grandson Iyemitsu, his worthy successor, who played Henry II to his William I) did not come until 1631, and it was in effect an entirely new body. The first meetings, it would seem, were held at the residence of Shimada, the Town Magistrate, in 1631; and about 1657 a separate office was assigned for the meetings of the members; but not for some years did the title *Hyojosho* come into general use. At first only the Town, Temple, and Finance Magistrates were called together, under the direction of one or more of the Council of State. Some years later one or more of the Censors were required to attend. About the same time a system of Court-days was established, which with some changes continued throughout the Tokugawa Shogunate. The sittings were to be six in a month,—three of them "formal" sittings (*shiki-jitsu*), and three of them "attendance" sittings (*tachiai-bi*). On the former occasions one of the Council was supposed to be present to oversee the proceedings and to assist in deciding cases of special difficulty; but in later days he seems to have come only once a month. The

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distribution of jurisdiction is a complicated one, and was marked by many changes of policy from time to time. It is here attempted only to set forth in outline the arrangement prevailing in the present century.

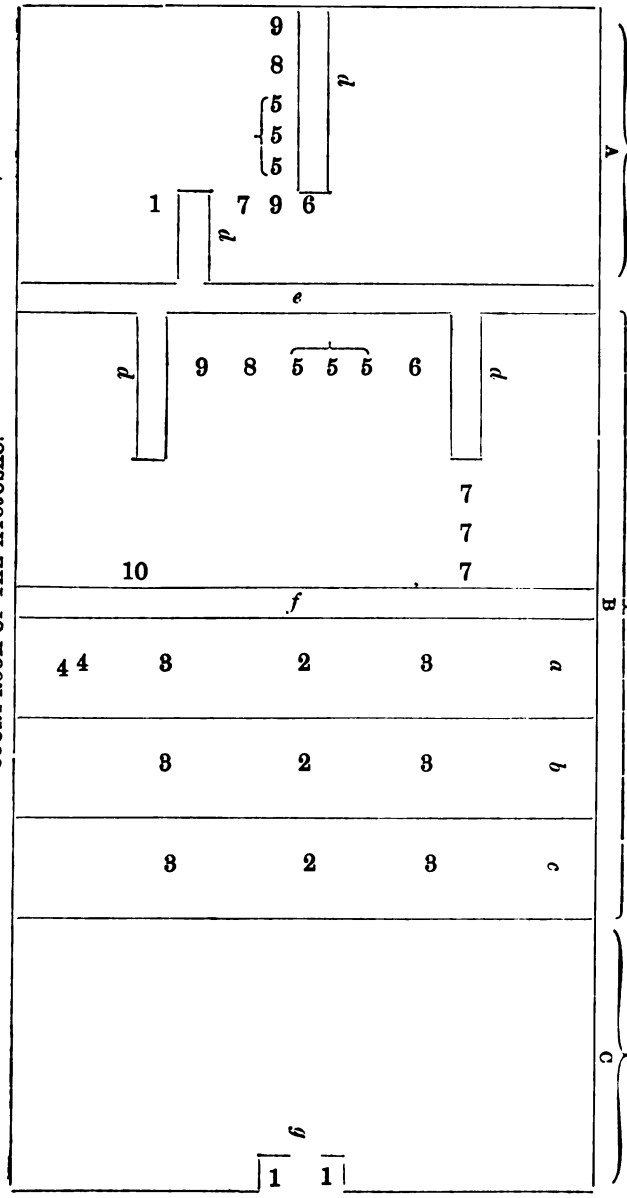
1. For some account of these, see the paper of Mr. Kaneko Kentaro, on "The Legal System of Japan," read before the Institute of International Law, September, 1892.

latter sort were possibly so termed because only a Censor was required to attend; but the Censor was present on "formal" days also. The dates of the "formal" sittings seem to have been at first the 4th, 12th, and 22nd, and of the "attendance" sittings, the 6th, 14th, and 25th. But it would seem that the first set of dates was afterwards altered to the 4th, 11th, and 21st. Extra sessions might be held when required, but they were not "formal." The number of Magistrates was three in all. Each of the Magistracies was a dual office. The Town Magistracy, as already explained, was filled by two persons, acting in alternate months. The Finance Magistrates were four in number, but the department was in two divisions, the Treasury Division (*Katt'-kata*) and the Lawsuit Division (*Kuji-kata*), circumstances having led to a partition of functions similar to that which occurred in the English Exchequer. The Temple Magistrates were usually four in number: but it is not unlikely that a similar division existed. Still there is one case in which all four took part in the decision. The presiding Magistrate for the month in each Department was the one who attended the Chamber. Among the three, the Temple Magistrate always took precedence, and at the "attendance" sittings he presided. The order of promotion, too, was always (it seems) from the Finance to the Town Magistracy and thence to the Temple Magistracy.

Each Magistrate, of course, had his own staff of assistants, some few of whom had a place at the sittings of the Chamber. But the Chamber had also a special staff of its own,—2 directors (*kumi-gashira*), 20 clerks (*tomeyaku*), and subordinate assistants. At a session of the Chamber, therefore, there were a considerable number of officials in attendance. The arrangement of the Court room was as follows:[1]—

1. This plan and the following description are adapted from Mr. Rudorff's essay, "*Rechtspflege unter den Tokugawa.*"

COURT-ROOM OF THE HYOJOSHO.



The Court-room was divided by sliding-doors (*e*) into two parts, (A) the *zashiki* (chamber) or *seshi-no-ma* (lineage-room), and the ordinary portion, which was again divided into (B) the *shirabe-seki* (trial-room) and(C) the *shirasu* (vestibule, white-sanded place); though the latter term was sometimes applied to the whole. The *shirasu* proper was about 24 feet wide, the walls being plastered with fine pebbles, after the style of a vestibule; and at the entrance (*g*) were (1) two vestibule-guards (*shirasu-ban*). The trial-room (B) began at a level some foot and a half higher than the vestibule. It was in three platforms, each 3½ feet wide, and each a few inches higher than the one before it. The first was (*c*) the *shita-yen* (lower platform), the next (*b*) the *uwa-yen* (upper-platform), and the last (*a*), next to the *nume*, or sill (*f*), separating it from the space where the judges sat, the (2) *nume-soto* (outside the sill). Out in the vestiblue sat the parties when of common birth,—farmers and towns-people. On the first and second platforms sat the *go-kenin* or lower *samurai*, according as their office was for life only or was inheritable; on the third, the *omemiye-jo* or lower *hatamoto*. This rule obtained also when these persons appeared as witnesses or otherwise. Where higher nobles were involved, the trial was conducted in the *seshi-no-ma*.

On either side of the party (2) sat a *hyojosho-ban* (3) (Chamber-guard), holding the former's sleeve. [1] On the left sat one or more *yoriki* and *doshin* (4) from the Town Magistrate's office. In the farthermost part of the chamber were ranged (5) the Three Magistrates (*Sambugyo*), with a director (6) and some clerks (7) at their left, and a Chief Censor (8) (*O-metsuke*), with his subordinates (9), (10) (*metsuke* and *kachi-metsuke*), on their right. There were no counsel for the parties; but there were *sashizoye-nin* (vouchers, lit., accompanying-persons), usually officers of the village or ward, who were required to accompany commoners to

1. Presumably in criminal cases only.

Court, and these, though their prime function was to certify to the parties' character and to testify, no doubt acted as advisers to the parties; for they were familiar with litigation and would naturally uphold their companions. Moreover the system of sending representatives (*dai*), as many indications show, came to be employed for the purpose of having one's claim or plea presented in a forcible and convenient shape by some capable person. On the whole these two expedients seem to have protected the parties' interests fairly well.

The *seshi-no-ma* was used by the Councillor of State whose turn it was to attend the formal sessions of the Chamber of Decisions. The paper sliding-doors between that room and the trial-room made it possible for him to enter, unheard and unobserved, at any time of the day, and listen to the proceedings,—an expedient characteristic of the Tokugawa administrative system. This room was also used, as has been said, for trials involving higher nobles, and in such a case screens (*d*) were so arranged as to allow the Councillor, as before, to enter and listen unobserved.

These distinctions of rank, it may be noted, had their effect also on the methods of imprisonment for crime and detention during trial. Commoners went usually in the former case, to the *roya* or common jail; the lower *samurai* to the *samurai* prison (*agariya*); while the higher nobles were committed for safe-keeping to the house of some other noble. This was done, for instance, to the famous band of the Forty-seven Ronin, after they had avenged their lord and while they awaited *hara-kiri*. As a rule neither parties nor witnesses were imprisoned pending a civil trial. The expedient of committing to the house of another, and making the latter responsible, was regularly employed, and answered for all purposes to our bail system; indeed for the poorer classes, who formed the majority of the litigants and could not have furnished money, greater justice undoubtedly

was attained under this system than under the English one of the same period. The detained person was supposed to remain always in the house of the *yado* or bail-man; but the latter might take the responsibility of letting him go about. The *yado* was entitled to a charge for food;[1] and this went into the costs of suit.

A final word as to the hours of Court and the judges themselves. The "private sessions" (*uchi-yoriai*)[2] of each Magistracy (which seem to have been formal meetings of the presiding magistrate and his chief clerks), opened at 10 o'clock in the morning. In the Chamber of Decisions the "formal" sessions opened at 6 o'clock. The officials, however, were required to come before that hour,—the magistrates at 4, the Councillor at 5 (though there was much license here), and the others at the same hour. On other days the session opened at 10; but the magistrates came at 7, and the others at 8.

Why these extraordinarily early hours came to be chosen does not appear. They may be partly accounted for by the general indifference to time which one notices in Japan. There seems to be no objection to any hour, however early or however late, if circumstances render it worth while to choose it. But it is not to be supposed that these hours were strictly observed. Even to-day the Supreme Court usually opens an hour or more after the appointed time; and probably the hours of the Tokugawa Chamber were so fixed in order to make due allowance for a customary delay in opening.

The judges were required to be appointed from the higher classes of *samurai*,—the Temple Magistrate from the

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1. Not for lodging, it seems, for this, like our jury-service, was a part of his political duty; but the food-charge was no doubt made ample enough to cover all expenses. 2. These were held three times a month; the most trustworthy dates are the 9th, 18th, and 27th. Summary trials (*te-kagiri*, off-hand) of minor cases were apparently disposed of daily by his clerks or by himself.

"loyal" *daimyo* (10,000 *koku* or more), the Town and Finance Magistrates from the upper *katamoto* (3,000 to 1,000 *koku*). But this did not prevent the easy elevation of men of talent, for promotion to such an office could be accompanied by investment with a fief of the grade required to make the appointee eligible. Moreover, these offices seem never to have become hereditary to any extent, as so many offices became in the times of peace which the Tokugawa family procured for Japan. Further than this, the appointments were (at any rate to a great extent) made by the promotion of those who had shown talent, rather than by mere favor. From acting well as *daikwan*, a man might come to a Magistracy. From Osaka he might look for promotion to Yedo; and the line of promotion from Finance to Town Magistrate and from Town to Temple Magistrate can often be traced. When a good judge was found, he was kept in office as long as his ambition would consent; for the next step to the Magistracies was the Council of State. The famous Oka, Lord of Echizen, was fifteen years Town Magistrate of Yedo and then twenty years Temple Magistrate. This, to be sure, was under Yoshimune, the only Tokugawa Shogun after Iyemitsu (3rd Shogun) who showed ability to direct the Government personally. But other instances occur in which magistrates held office for equally long periods.[1] Towards the end of the Shogunate, when the very foundations of government were trembling, public office became a difficult and hazardous occupation; for successful administration was almost impossible and failures cost the loss of office and perhaps, also, of honor and therefore of life. Thus we find in those closing years a constant change in the magistracies; and the incumbents are often upstarts of low degree, brought into prominence only by the refusal or failure of their superiors to accomplish impossibilities. The

1. A list of Magistrates is given in the Appendix.

development of the Tokugawa legal system culminates with the Kayei period (1848—1854), just before the arrival of Commodore Perry. Thenceforward, for twenty years, the whole system of government was in an unnatural ferment, and at the end of that time came the final dissolution.

The other subject intimately connected in many respects with local administration is that of

5. *Taxation.*

Taking as a whole the system of taxation during the last century, the taxes may be grouped into three general classes,—taxes in kind, labor-services, and money payments. Historically the grouping should include the first two classes only; for the money payments all appear in the beginning as commutations of the labor services and the payments in kind. Moreover the proportion collected in one form or another differed greatly according to the character of the community (rural or burghal), according to the policy of the fief, and according to the purpose of the expenses (local or feudal). Still the above division is a convenient one, and may be taken for purposes of description as the normal one.

Distinguishing the rural from the burghal system, we find in the former a *nengu*, or tax in kind, reserved usually for rice-land only; various *yaku* or labor services, applicable for local purposes as well as for public undertakings connected with agriculture and for private needs of the feudal lord; and money payments (under various names) made to the lord in the shape of taxes on upland, forests, industries, markets, etc, and to local communities in the shape of assessments for local expenses. In towns the tax in kind almost entirely disappears and is replaced by a direct land-tax payable in money. The *yaku* dwindle to a few services due from artisans or disappear altogether, and are replaced by the above land-

tax payable in money. The ordinary money-taxes on special industries and privileges remain and are increased. Furthermore, the taxes going to the feudal lord (including the Tokugawa Government, which in its taxation prerogatives was no more than a fief of extraordinary size) were in the large towns (having Magistrates) comparatively small. The local expenses of the town are the chief object of taxation, and the feudal lord gets annually a "thank-money" payment only (a gift which had become in effect a tax), with a few other prescriptive dues,—a fact which indicates very strongly the existence of a certain burghal independence approaching to that of mediæval European towns.[1] It will be convenient to take first the burghal taxation.

The chief tax of Osaka was the money payment made to cover the expenses of city administration. These expenses were divided into two classes,—city expenses and ward expenses. The former included wages of laborers on public works, wages of regular firemen, travelling expenses of city officers on public business, repairs of dikes, etc., together with certain local expenses of the rural suburbs under the control of the magistrate. The total amount of these expenses for the year was reckoned by the Town Magistrate and sent to the Chief Elders. The latter apportioned the assessment among the three districts and then among the wards of each district. Each ward was then responsible for the assessed amount and the Elder saw that it was collected and forwarded to the magistrate. The assessment of individual amounts differed according to the nature of the land. In the wards or merchants' districts the unit was a house having a frontage of 6 *ken* and a depth

1. No direct proofs of this appear outside of Osaka, and Japanese writers have never taken up the subject in this aspect. It is perhaps significant that the document in Osaka corresponding to the *kumi-cho* (the book of regulations which villagers were required to give obedience to) was termed *jo-yaku* (contract).

From the other wardsmen,.....$\frac{5}{10}$, in money, assessed per man.[1]

b. Where an abandoned child is found, the finder and his company are to have it put out in a family and taken care of, and the expense is to be thus divided:

From his house-owner .....$\frac{3}{10}$, in money;

From his five-men company[2] .....$\frac{2}{10}$, in money or labor;

From the other wardsmen.....$\frac{5}{10}$, in money or labor.

c. Where a man accidentally causes a fire, he should pay the loss (to others) himself; but if he is too poor, the expense should be thus divided:

From his house-owner .....$\frac{5}{10}$, in money;

From the five-men company.....$\frac{2}{10}$, in money or labor;

From the other wardsmen.....$\frac{5}{10}$, in money or labor.

d. Where a stranger is found dead, the expense of burial shall be thus divided:

From the house-owner (of the finder)$\frac{3}{10}$, in money;

From the five-men company.....$\frac{2}{10}$, in money or labor;

From the other wardsmen.....$\frac{5}{10}$, in money or labor.

e. Where a man is involved in litigation in another jurisdiction, and the ward-official goes with him, as usual, the man shall pay his own expenses; but if he is a renter only and is too poor, they shall be thus divided:

From his house-owner.....$\frac{3}{10}$, in money;

From the five-men company.....$\frac{2}{10}$, in money or labor;

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1. All the money expenses in the succeeding rules are apportioned in the same way. In such a case account was always taken of the *bungen*, or station in life, of the person assessed. 2. Excepting the first payor, if he was in the company.

From the other wardsmen.....$\frac{5}{10}$, in money or labor.

If he is a house-owner, and too poor to pay:

From the five-men company.....$\frac{3}{10}$;

From the other wardsmen .....$\frac{7}{10}$."

Thus it will be seen that the burden was thrown as far as possible upon the house-owners. The term "wardsman" (*chonin*) is constantly used in antithesis to "house-renter" (*shakka-nin*), and clearly meant a house-owner. Each house-owner, moreover, who owned another house in another ward was obliged to appoint an agent (*iyemori*, house-guardian) to represent him there,—one *iyemori* for every two houses in each ward. Thus there was in that ward a responsible person to perform the duties incident to house-ownership in that ward. The five-men companies were made up of adjacent families without regard to the ownership of the houses. Thus, in the above examples, the expense usually fell in part on the house-owner whose tenant the finder, etc., was (on the finder, etc., himself, if he was a house-owner and thus had already paid), and in part upon the other wardsmen, that is, house-owners, excluding the one who was already liable; while in all cases an *iyemori* in that ward was regarded as a house-owner for the purposes of that ward's taxes, and his disbursements were charged to his principal at the time of rendering accounts for rents collected.

The settlement of these expenses and their assessment were included in the monthly accounting made by the ward officials, and the amount thus due from the wardsmen made a part of the monthly sums collectible. The officers sent around a ticket showing the amount due from each one, and (it seems) payment was required to be made by the second day of the ensuing month.

Under the head of local taxes must be mentioned two other burdens,—the fee for transfers of realty, and the fire-service of the wardsmen. The latter was required of

every resident of the ward. There were, of course, regular firemen with fire-stations and watch-towers. But besides this each person was required to take his turn in rounding the ward (or a portion of it) at night, clicking the cherry-blocks (*hyoshigi*), so familiar a feature of Japanese life, and keeping watch against the breaking out of fires. But it is not to be doubted that the well-to-do wardsmen, when their turns came, hired substitutes for this service. The fee for registration of sales of realty was known ordinarily as *cho-kiri-kin* (fee for change of entry), but as a source of revenue the term *buichi-kin* (percentage-money) was more familiar. It was at first $\frac{1}{40}$, afterwards $\frac{1}{20}$ of the purchase-price. The earliest plan seems to have been to put these fees into the Magistrate's treasury; then they were distributed at stated periods among the wardsmen; and finally a fund was formed and the interest was taken to pay the ward's taxes.

It remains to speak of what was apparently the only tax paid to the Shogunate Government. This was the New Year's offering regularly made in return for the exemption from the regular land-tax[1] which the city had received in 1634. Up to that time Osaka had been assessed for this tax like any other district, the Chief Elders being responsible for its payment. In 1633 the Chief Elders asked the Yedo Government for an exemption from the tax; and in the ensuing year the 3nd Shogun, Iyemitsu, visited Osaka Castle, summoned the elders and chief elders of Osaka and the neighboring city of Sakai, and granted them an exemption from the land-tax due the Government. Whether any promise was given in exchange, or any condition required, does not appear. But thenceforward, on every New Year's Day, the Chief Elders presented to the Shogun at Yedo 10,000 *momme* in silver. This sum was assessed upon the three districts of Osaka in 7 parts,—4 from the North,

1. Known there as *chi-shi-gin*, an old term dating back to the 12th century or earlier.

2 from the South, and 1 from Temma. The chief elders from the North went every year; those from the South and Temma went only in alternate years.

We turn now to Yedo, where the system differed in important respects from that of Osaka. The Yedo townsmen had never obtained such a measure of independence; for their payments to the central Government included a number of *yaku* or labor services and several money imposts. There were several reasons for this. In the first place, Yedo had grown in comparatively recent times from a country village to a political capital, and the traditions of the rural *yaku* had not been thrown off. Second, the Shogun's palace and the works undertaken for beautifying and protecting the city kept up the need for popular services in the achievement of these works. Last and most important, the immediate presence of the offices of government and the relative commercial weakness of the city (compared to Osaka) kept the townspeople in greater subjection to the political authorities.

A survey of the land-tax budget for about the year 1795 will give a fair idea of the assessment of the local taxes. In this year there was a revision of the tax-rates, and a considerable reduction was made. The process followed was this. The total amount of rents received (as estimated from the land-registers, etc.) was taken as 547,000 *ryo*, in round numbers (the exact figures were 546,890, for they always calculated in detailed figures, even in making rough estimates). Out of this some 16,000 *ryo* went for governmental purposes,—sundry *yaku*, rice tax, etc. The city expenses (*cho-nuhi*) altogether required 155,000 *ryo*. This left about 376,000 *ryo*. Out of this should be taken 70,000 *ryo*, the estimated rent for the houses occupied by the owners and their agents (*shikiri-ukeoi-nin*; probably the same as *iye-mori* in Osaka). This left some 306,000 as the net receipts of the landlords. The question was how this

could be reduced. The gross rental of 547,000 was first reduced by $\frac{7}{100}$, giving 508,000 *ryo* as a low estimate based on a 5-years average. Then the 16,000 *ryo* of government taxes were taken out, being fixed and irreducible. Then the former amounts of 155,000 (city expenses) and 70,000 (nominal rental) were subtracted, leaving some 268,000 *ryo* as the net rental of the landlords. This was 38,000 *ryo* less than before. But the above 155,000 *ryo* (city expenses) were to be reduced by 62,000 *ryo* or $\frac{4}{10}$, thus reaching ultimately about 93,000 *ryo*. The whole amount of 155,000 *ryo*, however, was still to be collected; but out of it the landlords were to be paid back for a while the 38,000 *ryo* constituting the difference between their former and their present net receipts; because the requirement of an immediate lowering of their rental to such an amount would be unjust. The remaining 24,000 (62,000—38,000) was to be laid aside as a fund, and this fund would increase from time to time. The reason given for this was that the individual reduction which this sum would produce when apportioned would be very small; while Yedo was in great need of a large provision against fire and famine, as experience had taught. Of the total amount, 62,000, therefore, ultimately $\frac{7}{10}$ would be added to this fund, $\frac{2}{10}$ returned to the landlords, and $\frac{1}{10}$ applied to local expenses. Provision was also made for the disposition of any excess over estimated receipts.[1]

1. This fund afterwards became very large. It was distributed from time to time according to regular rules among the poor, the sick, the old, the sufferers by tempest, fire, earthquake, etc., and so was constantly fluctuating. But about 1830 it reached the (in old Japan) enormous sum of nearly 500,000 *ryo*; in a modern American city this would perhaps be equivalent to $5,000,000. The capital was lent out at interest, and the distribution of the income seems to have been made with care and fidelity. To-day the municipality of Tokyo possesses what remains of it, but it no longer does the good that it used to do. The place where this fund was managed came to be called the "town-assembly office" (*machi-kwai-sho*). This term was thus used

In the budget above given a sum of 16,000 *ryo* is set apart as taxes for the central government. These must now be described. It will be noticed that they were estimated as coming out of the total rental of property-owners, and doubtless they were collected at the same as the taxes for local expenses. But while the city expenses fluctuated, and on the whole the tax collected was only that amount necessary to pay the expenses, the taxes included in the 16,000 *ryo* were regular imposts payable to the Government at a fixed rate, like other central taxes. The chief of them were the *yaku*,—a term corresponding to that used in Osaka, but here applied to Government taxes. They were payable in money, but they were really the direct successors of the original labor *yaku* rendered by all rural districts and commuted early in the century into fixed money payments. For the purposes of *yaku* the classes of the population may be regarded as of four sorts; first, the people in the rural suburban districts (*machi-nami-chi*), who still paid the ordinary rice-tax (*nengu*) which was included in the above 16,000 *ryo*; second, the temple-lands (*jisha-ryo*, *jisha-monzen*), which were exempt from Government taxes; third, the wards occupied by merchant and *samurai*; and fourth, the wards occupied by artisans. Now the first and second did not pay the *yaku*; the third paid so-called *ko* (public)-*yaku*; and the fourth paid the so-called *koku* (country, national)-*yaku*. First, as to the *koyaku*. Of course in the beginning the tax was in the form of the labor of one person for so many days per year. The possession of a house of a certain size came to be the unit of assessment. Finally in 1722 it was ordered that all payments should be made in silver

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in a sense entirely different from that at Osaka. Of the Osaka ward-assembly offices I do not find any mention in Yedo; yet there must have been some way in which the property-owners expressed their approval of the ward-headman's budget.

coin; the unit of measurement (*koma*, small space) was made a house-space of 1 *ken* frontage and 20 *ken* depth (6×120); the unit of assessment was a house of one of three classes, according as the frontage was 5 *ken* (that is, 5 of the *koma* units), 7 *ken*, or 10 *ken*.[1] The amount paid in each class was the same,—30 *momme* a year (reckoning the traditonal service of 15 men's labor[2] at 2 *momme* per man); but the houses were so classified that the central and richer districts belonged to the higher classes (thus paying a higher tax). For instance, merchants in Iida ward, Hongo (the main street), Kanda, etc., were in the first class; while Asakusa, Matsumoto ward in Shabi district, and a few others were in the second class. The total number of wards thus assessed was 728; the number of single labor services (*koyaku-fu*; that is, reckoning the above payment of 30 *momme* as answering to 15 labor-services) reached nearly 100,000; and the total amount collected was from 3,000 to 4,000 *ryo*. With this money the number of laborers hired[3] for one day was, in 1736, some 90,000. These amounts do not include the sums collected from the *samurai* residence-property (*hai-ryo*, *kumi-yashiki*) received by them from the Shogun as retainers. The assessment-classes were more favorable in their cases,—the frontages being fixed at 10, 15, and 20 *ken* for the three degrees.[4] The total labor-services collected from them appear to have been about 35,000.

The *yaku* levied on the artisans' wards were known as *koku-yaku*. These also were imposed on the land-owners and house-owners among the craft, who presumably were

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1. The majority of houses were of less than this frontage in the commoners' wards; in such cases the *yaku* was divided into fractions. 2. This is the phrase used; but it meant originally one man's labor for 15 days in the year. 3. They were hired at the official day-laborers' bureau or market (*hiyatoi-za*). 4. But the ordinary *samurai's yashiki* would be larger than that of the merchant.

the master-workmen. They were collected usually through the chiefs (*toryo*) of the guild, but sometimes through the Government contractors and sometimes directly. I give the names of the wards in full in the following list, because they show how stable were the associations of occupation and locality, and because those who know modern Tokyo may be interested in tracing the traditional character of the various wards:

Trade.	*Number of Men.*[1]	*Ward.*
Indigo-dyers		Kanda district, Dyers' ward; South, West and North Dyers' wards.[1]
Timber-workers	1,717	Old and South Carpenters' wards;[2] Main and Cross Carpenters' wards.[3]
Iron-workers		Kanda district, Smiths' ward;[4] South and Sakurada Smiths' wards.
Masons	866	White-Plaster ward.[5]
Sawyers	235	Chief Sawyers' ward.[6]
Mat-workers	437	
Moulders		Kettle and Cross ward.[7]
Tub-makers	970	Tub ward.[8]
Wooden-ware makers		Cypress-goods ward.[9]
Boatmen		Old and New Net ward,[10] Azabu district, New Net ward, Surf ward.[11]
Pack-horse and post-horse owners		Great South, Yotsuya, and Akasaka Relay wards[12];

1. *Minami*, etc., *Konya-cho*. 2. *Moto* and *Minami Daiku-cho*. 3. *Tate* and *Yoko Daiku-cho*. 4. *Kaji-cho*. 5. *Shira-kabe-cho*. 6. *O-nokogiri-cho*. 7. *Nabe-* and *Yoko-cho*. 8. *Oke-cho*. 9. *Hi-mono cho*. 10. *Koami-cho*, *Shin-ami-cho*. 11. *Nami* (wave)-*shiro* (whiteness)-*cho*. 12. *Demma-cho*.

Trade,	*Number of Men.*	*Ward.*
		Tide ward.[1]
Gun makers		Gun ward.[2]
Lacquerers	115	South Scabbard ward.[4]

In many of these cases the payment per man was about 2 *momme*. In most of them there was a counter-payment of rice, etc., by the Government, corresponding to the food which under the old system of labor-services was supplied to the laborers. The above list is not exhaustive, but the other payments (such as that for dredging the canals), though they were required from special wards, were not associated with special trades. A number of *yaku* lingered in their original form, either as labor-services or as supplies of material. Such, for example, was the supply of timber for the scaffolding when a criminal was executed. There were also a few *yaku* which were collected, not from the property owners, but from individual workers without regard to their possession of property. The indigo-dyers, smiths, picture-framers, tool-sharpeners, barbers, and a few others paid a tax of this sort though the chiefs of the guilds. Finally, day-laborers paid 30 *mon* (less than $\frac{1}{100}$ of a *ryo*) a month to the day-laborers' bureau.[4]

There was also a ship-tax,—*kawafune nengu* and *yaku-sen*. The number of freight-boats, large and small, in and about Yedo was about 1,500, in the middle of the 18th century: the total number entering the port from without, 21,000. From these some 4,000 *ryo* (as fixed in later times) was collected. There were also money-taxes on pawn-shops, oilmakers, drug-sellers, warehouses, barbers, and a few others. But the term here applied was usually *myoga-kin*, "thank-money."[5]

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1. *Nami-shiwo-cho.* 2. *Teppo-cho.* 3. *Minami-saya-cho;* because sword-scabbards were lacquered. 4. Of course these taxes not imposed on property-owners were not included in the budget originally mentioned. 5. The *buichi-kin*, or fee for land-transfers, was as in Osaka an asset for local purposes. The fee proper was 2

In the city of Sendai we find a system differing not essentially from that of Yedo, though much simpler in scope. The office expenses of the *kendan* and *kimoiri* and the fire-watch expenses were assessed by the *kendan*, *kimoiri*, ward-elder, and head company-chief for the ward to which they belonged; and the burden fell upon the house-owners of the ward. Repairs of roads, however, were paid for by the abutters; repairs of bridges by the feudal lord. Certain wards were regularly liable for official post-horse service, and others for casual service. The process of commuting this into money payment had begun, and the business was in reality done by contractors; these furnished the horses, and the amount was then apportioned among the wardsmen. This process had not, however, gone as far as it had in Yedo, where the wardsmen had purchased certainty of taxation by promising fixed payments. But Sendai had achieved considerable independence, for there appear to have been no other payments due to the feudal lord.

In Nagasaki the taxes fell as a rule upon proprietors only. The *jishi-gin* or land-tax was assessed according to the size of the houses, the unit being an area of 1 *ken* (6 feet) frontage and 15 *ken* depth. This tax, it seems, went to the Emperor. There were also a *hasshaku-gin*, paid on the 1st of the 8th month,—in form a present to the Magistrates, but in the reality a tax on the house-proprietors. This, however, was supposed to be recouped by the dividends which the householders received from the *hana-gin* (flower-money), a percentage taken from the selling-price of the goods sold in Nagasaki by the licensed

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per cent on the purchase-money; but extra presents to all concerned (in old times a gift to every house-holder of the ward) eat up a great deal more. For the registration of successions or transfers between relatives the fee was reduced one-half or one-third.

foreigners. After official fees were subtracted from this *hana-gin*, it was sent to the different wards in shares; and when the ward's expenses for repair, watches, etc., had been taken out, the remainder was divided among the tax-payers,—a dividend occurring perhaps four times in a year.

We turn now to the rural taxation. The differences between the policies of different fiefs affect especially the methods of rural taxation, because the largest towns, such as Osaka, Nagasaki, Sakai, etc., were all under Tokugawa Magistrates, and there was a greater approach to similarity. It is difficult to infer from the conditions of one region to those of another. But there were certain general features noticeable everywhere, and we shall be able at least to get some notion of the methods followed in the regions with which the ensuing Parts are concerned. And first of local taxes.

In the Tokugawa dominions the local expenses were of three classes,—the maintenance of the headman's office (fees, pens, ink, paper, etc.), the travelling expenses of the officials when leaving the village on business, and the sundry construction and repair expenses connected with the village agriculture. The method of determining what items of the latter sort of expense should fall upon the village and what upon the feudal lords was different in different regions; the general rule was that the minor works should fall to the village's share; but in many cases specified classes of aqueducts, roads, bridges, etc., were maintained by each party. In Sendai there were two local districts and two budgets. The expenses chargeable to the district governed by a chief headman (*o-kimoiri*) were the salaries of the *o-kimoiri* and his assistants, the paper, pens, etc. of the office, the repair of the district storehouses for rice, and of the *o-kimoiri's* and *daikwan's* offices, and the wages of the store-house laborers. In the district of a *kimoiri* the expenses were the salaries of the *kimoiri* and his assistants, and of the *kendan*, if any, the expenses

of the offices, the wages of the aqueduct-keepers and the rice-storehouse laborers, and the cost of the post-houses.

In the Tokugawa dominions the whole account was kept by the headman and company-chiefs in a regular account-book, two copies being made, one to be deposited ultimately with the *daikwan*, the other to be kept by the headman. Small expenses were paid by the officials from their own pockets; larger sums were collected from time to time by calling the people together and assessing them for the required amount; and such sums, it would seem, did not go into the account-book. Twice a year, in the 7th and 12th month, it is said, the accounts were made up and the dues assessed; but this rule does not seem to have been generally observed. The farmers' representatives (*hyakusho-dai*) were always present when the accounts were made up, and took care that the assessment was properly made. The assessed production of each one's land was the basis of the assessment. Then the people were summoned and their approval asked. The seal of every farmer in the village was required to be placed on the document when approved. In Sendai the system was not essentially different, except in the mode of assessment. In the *o-kimoiri's* district, one half the whole amount was levied on the agricultural land and one-half on the houses. In the *kimoiri's* district the expense of the family-registration was assessed according to the number of "persons",—that is, presumably, of heads of families; that relating to repairs of aqueducts, etc., according to the assessed value of agricultural land; and that relating to salaries, etc., according to the total assessed value of each one's realty, houses and land included.

An abridgment of the account sheet of a village in Kai *kuni* for the year 1847 will perhaps give a clearer idea of the ordinary village tax-expenses:

"Kayei, I (Ape), 4th month.

Book of Sundry Expenses of the Village and Laborers' Hire for the year of the Goat, *Komakori*, Gokurakuji village.

	momme.	*bu.*	*rin.*
For stakes, straw bags, and labor on repairs of Shibu river, paid by Tarobei,	284	9	1
		2nd month	
For labor, etc., in clearing channel and repairing banks of the Kamada river, paid by Tadahichi,	245	2	6
		3rd month	
For a dam on the Kamada river and cutting away reeds, paid by Hikoshiro,	51	3	
		4th month	
For cutting away reeds at the Myojin and Nishida dam, paid by Tarobei,	43	7	9
		5th month	
For lodging at the Hasegawa House, in Ishiwa,[1]	95	9	
For pens, ink, paper, candles and straw shoes, used by the headman in one year,	48		
For salary of headman,	240		
For the offering of first fruits of rice at the Ise Temple,[2] by the supplication *Ichimondohara*,	12		
For salary of the regular servants of the village,	72		
For cost of post-transmission of official decrees for the year,	24		
For cost of mats at the assembly-office,	6		
For salary of farmers' representatives,	42		

1. These succeeding expenses were apparently paid by headman himself. 2. The national temple in the province of Ise.

	momme.	*bu.*	*rin.*
For freight paid to vessels at Otsu,	12		
at Otogura,	9		
at Ishiwa,	3		
at Futsukaichiba,	3		
For bridge-tolls at Fuyefuki river, Otsu,	6		
For wages of fire-watchmen,	30		
For lodging paid for priests and other guests,	30		
For cost of dam of Tojiya,	18		
of Yojinbun,	6		
of Mugyota,	4		
For rent of watchman's cottage,	4		
For cost of the festival of the deity Doso, for driving away the rice-plant insects,	15		
For lodging at the Kawachi House, in Kofu,	9	8	
For cost of tax-rice sent to Yedo,	150	6	1
For the second assessment for the cost of the lawsuit with Otogura, Imagawa,	20	7	9
For cost of rebuilding dams and bridges on the moor, seven in all,	74	8	9
For straw bags, lanterns, and stakes, and for labor required at the time of the overflow of the Shibu river,	77	8	6
For repair of roof of Government rice-storehouse,	63	4	5
For wages of storehouse-watchman,	32		
For expense of the supplication *Hyakumanben* made by the whole village,	18		

	momme.	*bu.*	*rin.*
For wine to laborers,	6		
For matting and ropes at the official land-inspection,	1	5	
For repair of water-pipes on the moor, and for cost of straw bags, stakes, lanterns, and torches,	148	7	4
For payment of the official loan for river-bank repairs,	1,102	5	8
Total,	3,111	3	8

Total assessed production of village ..... 530 *koku*, 4 *to*, 7 *sho*, 8 *go*:
Less the ground occupied by official storehouse ..... 4 ,, , 4 ,, ,
Net assessed production ..... 530 ,, , 0 ,, , 3 ,, , 8 ,, .

Dividing the total expenses by this amount, we have the rate:

For 1 *koku* of assessed production,
5 *momme*, 8 *bu*, 7 *rin*.

The above account gives the expenses incurred by the village during last (Goat) year. Its apportionment has been made with complete impartiality among all the villagers, in the presence of the great and the small farmers as well as the stranger-farmers.[1] If any of us requires of the farmers any larger amounts, he shall suffer whatever penalty you choose.[2] In witness of its correctness we hereby affix our counterseals.

Koma *kori*, Gokurakuji village.

Asayemon, *Headman*,

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1. *Iri-saku*; outsiders owning land in this village. 2. This is the language of the officers who drew up the account. The others sign by way of expressing assent.

Koma *kori*, Gokurakuji village.

Hikoshiro,	*Chief farmer*,
Tadahichi,	"
Tarobei,	"
Yeisuke,	*Farmer's representative*,
Riyemon,	*Accountant*,
Isuke,	*Company-chief*,
Shozayemon,	"
Tozayemon,	"
Banzayemon,	"
Sajibei,	"
Ichizayemon,	"
Mohachi,	"
Denzayemon,	
Hyoshiro,	
Kiyemon,	
Shimbei,	
Toyokichi,	
Yonebei,	
Kuyemon's widow,	
Isobei,	
Yeibei,	
Shobei, represented by Mohachi,	
Tsuki,	
Magohachi,	
Magoyemon,	
Arekichi,	
Tasuke,	
Rimbei,	
Hama,	
Shubei,	
Hambei,	
Take,	
Namokichi,	
Joyemon,	
Rihei,	

To the Ishiwa Office.

[Indorsed.]

The above has been inspected by the Government.

The Ishiwa Office."

The taxes rendered to the lord in rural regions may be classed roughly into three general kinds, the labor-services, the land-tax, and sundry imposts. Of the latter little need be said. They differed greatly according to the policy and the productions of the fief; they were numerous in this fief, and few in the next. Some of them no doubt were the successors of an original labor-service, now commuted into money. Others were hardly to be distinguished from a land-tax. Still others were imposts laid on profitable transactions or occupations which did not happen to bear any of the other and older burdens. The list includes taxes on forests, water-wheels, markets, fisheries, horses, hunters, ponds, firearms, mines, salt, wine, tobacco, oil-making, bean-sauce-making, indigo-making, and so on. The lord also took his share of treasure trove, if this may be regarded as a tax. The importance of these taxes differed in different districts,—salt in one fief (the salt was all obtained by evaporating sea-water), fisheries in another, mines in another, bean-sauce in another, being the important sources of revenue. But, except where special occupations predominated, these taxes did not have any importance for the mass of the people in comparison with the labor-services or the tax on cultivated land, which we may now consider.

Under labor-services in the old days had also been included the products of industry (other than grain) which were to be handed to the lord by those who could best render service in this way. But these were soon commuted into money, and the labor-services as understood in the last century included the customary work due from the people for the needs, administrative or personal, of the

lord. The features of the Sendai system will here be noted briefly, that fief being taken because its administrative organization probably excelled all others, excepting that of the Tokugawa, and because in the Tokugawa system the commutation of services into money or rice payments had produced more or less irregularity. The general term for these services was *yaku*, as already mentioned. The more scientific term was *yoyeki;* while the popular word was *ninsoku* (labor). To begin with, the number of days' labor (or laborers for one day) per year required of a given family was assessed according to the official valuation of its land. In Sendai, as we shall see, land was assessed in money, not in rice-production, the unit being the *kwammon* or thousand *mon*. Now the number of labor services (*ninsoku*, meaning by this one man's labor for one day) required had of course varied at different epochs. On the whole it increased, and in the middle of the present century the strain on the farmers became so great that radical reforms became necessary. At the period we are taking the number of labor-services regularly required was 20 per year for land of 1 *kwammon* in assessed value, land of 1 *kwanmon* (good quality) being about 8 *tan* in area. As the product of 8 *tan* was about 12 *koku*, we may infer that this requisition was somewhat higher than in the Tokugawa dominions, for in the latter the number required was 100 labor-services for 100 *koku* assessment, and for 50 of these a rice-wage of 7 *go*, 5 *shaku* per day was paid. The services above-mentioned were known as the *sei-yaku* or regular services. They were of three sorts: first, *o-yatoi-ninsoku*, or common labor; second, *mizushita-ninsoku*, or irrigation labor; and last, *koyaku-ninsoku* or public labor. The former class included sundry labor for minor purposes. If it was on an undertaking within the village, it was called *uchi-yatoi* (inside-labor); if without, *soto-yatoi* (outside-labor). Of the 20 services, 4 were to be of this sort. The second class, as its nam

indicates, included the building and repair of dikes, bridges, dams, etc., the cleaning of aqueducts, and innumerable other matters. To this 6 of the 20 services were appointed. The third class included the larger enterprises affecting the welfare of the fief and the works undertaken for the immediate pleasures or necessities of the feudal superior. This public labor might be owed either to the head of the fief, the *daimyo*, or to one of his under-vassals. The demesne land reserved by the lord himself was known as *o-kura-iri* (Treasury income); the land granted out as a feud to under-vassals, as *kyunin* (stipendiary). No person owed service to more than one feudal superior; his 10 labor-services might go to either a vassal or the *daimyo*, but not to each. Now the demesne land and the stipendiary land of course lay intermixed throughout the fief: and it constantly happened that an undertaking involved the peasants of both kinds of land. Moreover, as the regular number of labor-services might happen not to be needed in a given year, there was frequently an unused remainder out of the whole 20 rightly demandable. These, however, the peasants did not escape; if they did not labor, they must pay the equivalent in money at the rate of 50 *mon* for a day's labor. Hence arose the rule that the order of requisition of services, where the district liable to be called on included both demesne and stipendiary land, should be, first, the residents of the stipendiary land, and next, those of the demesne land; for in this way the *daimyo's* treasury, if the labor limit was not reached, obtained what it much preferred, a cash payment.

The total number of labor-services exacted at the end of the century was upwards of one million,—common labor, 210,000; irrigation-labor, 430,000; public-labor, 400,000 (demesne land, 240,000, stipendiary land, 160,000). But these were the regular services only. There were also precarious services, demandable as occasion required—*tsukai-sute-ninsoku* (intermittent labors). These seem originally

to have been substitutes for the regular services, but afterwards were demandable additionally. About the beginning of the last century the rule obtaining was that these additional services were to bear the proportion of one-third to the whole labor needed for the extra works. Thus, assuming that a piece of land was assessed at 1 *kwan* 5 *mon*, and that 350 services were needed, the apportionment would be as follows:

Irrigation and common labors	15
Public labors	15
Extra labor	320
Of which,	
a) The land-owner sent	$106\frac{2}{3}$, and
b) The lord paid for	$213\frac{1}{3}$
Total	35

Only class *a*) was reckoned as services due from the people; the labor paid for by the lord was apparently hired outside by him.

It must be noted in passing that the apportionment was not always based on the regular assessed value of the land. For the purposes of the *ninsoku* a portion only of this value might be taken. Thus, suppose a dike was to be repaired, and the maintenance of the dike was charged upon 10 villages, a portion at least of each of them being served by the aqueduct in question. Supposing that each village was assessed at 100 *kwan*, and that $\frac{3}{5}$ only of each village was served by the dike, the total valuation upon which the labor was to be assessed was only 600 *kwan*, or 60 *kwan* for a given village.[1] As in fact the total valuations of the villages were far from being in any degree equal, and as a given undertaking might affect one or another village in very different measure, such a system of equalization was essential.

There, were, of course, numerous complications not found in these simple principles, and perhaps in no one case

1. Nevertheless, when the tax-notice came to the village, the amount was assessed among all the land-owners, that is, on the basis of 100 *kwan* valuation.

did they find application in the above form. One or two examples will illustrate their practical working.

In 1786 an undertaking came up which affected the interest of a district assessed at 3 *kwan* 655 *mon*, of which 710 *mon* was demesne land and 2 *kwan* 945 *mon* was stipendiary land, and of the latter a portion, 1 *kwan* 985 *mon*, was land reclaimed bythe vassals themselves and therefore specially treated. The whole number of labor-services needed was 117, and the apportionment was as follows:

a)	Public-labor demandable at the regular rate of 10 services per 1 *kwan*.....		86
	Of which were furnished,		
b)	By residents of demesne land ...	7	
c)	By residents of stipendiary land (according to the above relative amounts, 710 *mon* and 2,945 *mon*)	29	
d)	Remainder		81
	Of which were furnished		
e)	By the 1,985 *mon* of reclaimed land its proportion (to 3,655 *mon*).[1]	44	
f)	By the other 1,670 *mon* of land	37	
g)	And of these 37 were furnished, according to the rule, one-third at the expense of the feudal lord	13	
h)	One-third by the people as precarious service.....	12	
i)	One third more:[2] by demesne land (710 *mon*), 5; by stipendiary land (960 *mon*), 7.	12	
			117

1. This reclaimed land had less rice-tax than others and hence received no assistance from the lord. 2. It is not clear why this second third fell on the people.

In 1731 there were repairs to be made on a dam and river-banks in Aramaki village, Kokubun *kori*. An order was issued calling for 24,330 labor-services, and the apportionment was as follows:

a)	One-third by the feudal lord	8,110
b)	One-third by the residents of the castle-town (Sendai)	8,110
	Of the remaining third:	
c)	One-third by the residents of the village in Kokubun	3,407
	Of the remainder:	
d)	Public labor by the residents of demesne lands	2,338
e)	Public-labor by the residents of stipendiary land	2,170
f)	Irrigation-labor	901

Of the historical changes in methods and amounts it is impossible here to speak. If we look at the other regions we shall find the complications even greater; for the fief of Sendai was administered with the greatest ability and system, and that which is simple in this fief would be full of confusion and irregularity in most others. One may at at any rate gather from this brief description of the methods of a single epoch and a single fief the general trend of the whole.

The same apology must be made in turning to the tax on cultivated land, or, as it was in substance, the rice-tax. A bulky volume might be written on the rice-tax of Japan, with its history in the different fiefs.[1] It must suffice here to touch briefly on

1. One cannot help wishing that some industrious German scholar, searching for an unoccupied nook of learning in which to prepare the book or thesis that is to win his professorate, could find his way to the treasures of material bearing on the taxation, agriculture, land tenure, and commerce of Old Japan.

those features of it most essential to an understanding of land tenure and the other topics of the ensuing parts. The methods employed in the Tokugawa dominions will be taken as the standard ones, and a few important variations will be noticed.

The chief classes of land, for taxation purposes, were two,—dry and wet, or upland and rice-land, as they will be here termed. Not all rice, but substantially all, was grown in wet land. The distinction between the two was not merely a matter of cultivation or crops; the upland was usually regarded as less valuable, in the ratio of 6 to 10, or, in some places, 5 to 10. Nevertheless these two, which were intermingled throughout the country, were constantly grouped together in speech as *ta*[1]*-hata*[2] or *dem-pata*, for they stood by themselves as the cultivated land of the country. In Part II the terms *tahata*, *dempata*, are used interchangeably with *kochi* (cultivated land). It was with these that the land-tax chiefly dealt. There were of course other sorts upon which the land-tax or an analogous substitute fell. Even fishing-villages had their *taka* or assessed production from the sea; and residence-land often was assessed in *koku*. But these were minor sources of revenue, and in most of them the term *taka* had been extended to them by analogy only.

The theory of the tax was simple. Find the total production of each plot of land, fix on this basis an assessment for an indefinite time, and collect as a tax a certain proportion of this assessed product. In all three of these steps, however, came complications and variations of practice. Moreover, in all three Japanese scholars are found to disagree among themselves and to make general statements which are not correct.

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1. Rice-land. 2. Upland.

The unit of area was 1 *tan* or about $\frac{1}{4}$ of an acre. Of these *tan* 10 made a *cho*, while subdivisions were made into *se* (30 for 1 *tan*) and *bu* (10 for 1 *se*). The *bu* was equivalent to the *tsubo*, about 6 feet square; thus 300 *bu* made 1 *tan*, the *tan* measuring 30 × 10 *bu*. From 1 *tan* of first-quality rice-land (*jo-den*) it was estimated that 3 *koku* of unhulled rice would be produced; or putting it differently, from 1 *bu* the product would be 1 *sho* ($\frac{1}{100}$ of a *koku*). From this were to be subtracted 6 *to* for cost of production, seed, etc.; 1 *to* for seed (1 *to* is $\frac{1}{10}$ of a *koku*), $7\frac{1}{2}$ *sho* for wages to laborers, 4 *to* $2\frac{1}{2}$ *sho* for manure; or, as another calculation (but less probable) has it, $1\frac{1}{2}$ *to* for seed, $1\frac{1}{2}$ *to* for broken grain, and 3 *to* for loss in harvesting. The remainder, 2 *koku* 4 *to*, was halved to get the hulled rice, one-half being lost in threshing. Thus the net product was 1 *koku* 2 *to*. This seems to have been the calculation on which the tax was based; for after the 1 *koku* 2 *to* was found, the Government proceeded to take half as the tax (*tori-mai*, taken-rice), and leave half to the land-owner. But it will be seen that 3 *koku*, the total product, would give 1 *koku* 5 *to* of hulled rice, out of which the cost of production would take 3 *to* more of hulled rice. Now the figures taken as the assessment seem to have been this 1 *koku* 5 *to*; for we always find this amount given as the typical assessment of first quality rice-land; in fact in many places the assessment reached 2 *koku*, and it usually erred on the side of leniency. But the same result as that attained in the above calculation was reached by altering the proportion of the tax; for the Government took $\frac{4}{10}$ of this 1 *koku* 5 *to*, or 6 *to*, the same as before. The common expression among the people was *shi-ko roku-min*, "four [to the] Government, six [to the] people." Thus the difference between the policies of various fiefs seems to have arisen from the allowance by some of this cost of production, etc., and the non-allowance by others. The proportion of

product taken by the feudal lord varied in different places; but it does not appear that there were any other general rules than these two, *i.e.* by one, half to the lord, by the other, four-tenths to the lord. If other proportions existed, they probably arose from unjust assessments or arbitrary application of one of these rules. In the Tokugawa dominions the latter is always given as the rule. The term applied to this 1 *koku* 5 *to* per *tan* was *kokumori* or rate of *koku*-production; while the total assessed production of a given piece of land was knows as *kokudaka*, or amount of *koku*-production. Simple as the use of these terms would seem to be, the historical variations in the modes of taxation before the Tokugawa times, with the differences of local practice, have caused the most misleading errors. In most of the works by foreign authors describing Japan it will be found that the *taka*, or assessed amount, so frequently used to indicate the size of a *daimyo's* or vassal's estate, is taken as the amount of income received by him as land-tax. That it should be so, however, is quite impossible. In the first place, the assessed *taka* was always substantially the same, the last great settlement having taken place at the end of the 16th century; while the tax-amount varied constantly through rebates on account of crop-failures, and differed in different fiefs according to the customary rate of taxation. The tax-amount would never have served as the basis of rank-gradations, for there would have been no fair standard of comparison. Furthermore, the documents of the period clearly prove that the *taka* of a plot of land or a village or a fief was the total assessed production, not the total tax-amount. I reproduce the first lines of a property-schedule handed in by a village in Kai *kuni*, (the one already mentioned):

"Inspectors : the *daikwan* Kameda
Saburobei and Hida Gorobei.
Kai *kuni*, Koma *kori*,
Gokurakuji village.

Taka;	530 *koku*, 4 *to*, 7 *sho*, 8 *go* :
Area:	40 *cho*, 6 *se*, 3 *bu*:

Of this:

Rice-land	*taka* is	329 *koku*, 8 *to*, 4 *sho*,
"	area "	23 *cho*, 4 *tan*, 5 *se*, 29 *bu*,
Upland	*taka* "	200 *koku*, 6 *to*, 3 *sho*, 8 *go*,
"	area "	16 *cho*, 6 *tan*, 28 *bu*.

Of this the rice-land is:

	Area	Assessment per *tan*.
First quality.....	5 *cho*, 3 *tan*, 0 *se*, 24 *bu*,	1 *koku*, 9 *to*.
Second "	5 " 5 " 2 " 13 "	1 " 8 "
Third "	4 " 6 " 2 " 13 "	1 " 4 "
Fourth "	6 " 1 " 4 " 22 "	9 "
Fifth "	1 " 8 " 3 " 29 "	5 "

and the upland is

	Area	Assessment per *tan*.
First quality.....	3 *cho*, 9 *tan*, 2 *se*, 19 *bu*,	1 *koku*, 5 *to*.
Second "	4 " 6 " 8 " 9 "	1 " 3 "
Third "	3 " 0 " 1 " 4 "	1 " 1 "
Fourth "	2 " 2 " 4 " 18 "	8 "
Fifth "	3 " 9 " 6 "	4 "

together with

Residence-land.....	2 " 3 " 5 " 6 "	1 " 2 "

Now the best average production of rice-land is not more than 2 *koku* per *to* or 20 *koku* per *cho;* Mr. Kinch has stated the ordinary average at the present day as 1 *koku* 5 *to* per *tan* or 15 *koku* per *cho*.[1] Hence it will be seen that the term *taka* as here used must necessarily refer to the assessed production, and not to the proportion taken as tax; and there are certainly no two senses in which *taka* is generally used.

1. Trans. Asiat. Soc., Jap., VIII, 396.

It would seem that the farmer never thought of his tax as a fixed amount or as a basis of comparison. He kept in mind his *taka* or assessed valuation, and from this a mental calculation easily gave him the normal amount of tax he might expect to pay.

As will be seen above, each plot of land was placed in one of several classes, according to the sample of its rice examined by the *daikwan*. There were three regular classes (*jo*, *chu*, and *ge*, higher, middle, and lower), but other intermediate or additional grades were usually made. It will also be seen that upland was assessed at less than rice-land; this was because the product of a given area was less valuable than rice-land. The assessment, however, was made in terms of rice-product, and the ratio obtaining in the Tokugawa dominions was 6 parts in 10 (*roku-bu-chigai*).

Sometimes, instead, it is said that first-quality upland was equivalent to second-quality rice-land. In the above schedule neither of these rules is carried out; but probably the region was an unusually fertile one. The truth in regard to the regular rule seems to be (though it is almost impossible to find the real clue amidst the inconsequential and confusing statements of the Japanese antiquarians) that the rule was a compound of the two; that is, the *kokumori*, or rate, of upland was sometimes made equal to that of the same area of second-quality rice-land, and in this case the rate of taxation was the same as for rice-land; while sometimes the *kokumori* (and hence the *taka*) was fixed at $\frac{6}{10}$ that of second-quality rice-land, but in this case the tax-proportion was $\frac{2}{3}$, instead of $\frac{4}{10}$. The result was the same in either case. Thus, the *kokumori* of a piece of first-quality upland might be reckoned at 10 *to*, the *kokumori* of second-quality rice-land, in which case the tax would be $\frac{4}{10}$ or 4 *to*; or it might be reckoned at $\frac{6}{10}$ of that amount, or 6 *to*, in which case the tax would be $\frac{2}{3}$ or 4 *to*.

But the tax was sometimes collected in money, and this necessitated a money-assessment. Money payments seem to have ruled everywhere for upland; the difference between the staple rice and the variable minor upland products (vegetables, barley, etc.) easily accounting for this. In certain regions, moreover, even the rice-land tax was paid in part or entirely with money. In Sendai the latter was the case; in Kai *kuni* and in the region around Kyoto one-third was payable in money. The rate of exchange in Sendai was 100 *koku* = 10 *kwan* (i.e., *kwammon*, 1000 *mon*). In Kai *kuni* the rate was 100 *koku* = 20 *kwan*. It is not clear how rice came to be so much cheaper in Sendai, unless it was the distance of the fief from Yedo and the necessity for a long sea voyage. In Kai *kuni* this equation of 100 *koku* = 20 *kwan* gave rise to a formula by which the farmer could find the equivalent tax in money. This was "*ni-koku go-to chigai;*" which meant that for every 2 *koku* 5 *to* due as rice-tax he must pay 1 *kwan* in money.[1] Thus, in the above example of an upland-tax of 4 *to*, the money-payment would be found by the proportion 2 *koku*, 5 *to*: 1 *kwan* or 1000 *mon*: 4 *to*: ? *mon*, and the tax would be 160 *mon*.

The rice was not delivered in the above measures, but in bales (*hyo*). The normal amount in the bales delivered at Yedo to the Tokugawa *samurai* was 3 *to*, 5 *sho*. This was known as the 3½ (*mitsu-han*, *mitsu-gobu*) bale. But in Nagasaki, Osaka, Kofu, and other interior and western districts the bale contained 4 *to*; while in Owari a peculiar bale of 5 *to* was used. Thus we find the lower *samurai* paid by a fixed number of bales of rice; while the production of a given fief was always estimated in *koku*. But even the *hyo* was in a certain sense a nominal, not an actual measure, for 2 *sho* were required

1. This was the *kwan* of the money known as *yei* or *yeiraku*, and was worth 1 *ryo*; while the ordinary *kwan* was worth only ¼ *ryo*.

to be added by the farmer to make up for loss in transport; this tare being known as *o-tsuki-mai* (added-rice) or *kuchi-mai* (mouth-rice, because it was regarded as put in at the mouth of the sack, above the regular measure).

The story of the tax-rice, after it left the official storehouse in the interior and started on its journey to the markets of Yedo or of Osaka, is the story of Japanese commerce. The distribution of the rice-product was the central motive of commercial life. We ought now to follow the path of the tax-rice and trace the various classes of persons with whom it subsequently had importance; but in order to do this understandingly, we must first look briefly at the conditions of commerce in Old Japan,—commercial methods in general, guilds, transportation, money, and exchange. And, first, of

6. *Commercial Houses.*[1]

The predominance of the family idea is the key to the methods of Old Japanese commerce. Long before the idea of a guild and its shares (*kabu*) came the notion of a family as an entity and of its business as a *kabu* belonging to that family. Since every individual existed only as a member of a particular family, the

1. A portion of this section is founded on the results of a Government investigation made by the Department of Agriculture and Commerce, and published in abridged form, in the *Kampo* (Official Gazette), in various issues of February, March, and April, 1885, under the title "*Shogyo Kwanrei.*"

young man growing up and desiring to become independent could do one of two things only, in the social order of the times; he could ask to be set up by his father (or by his elder brother, if the latter had become head of the family) in a branch family, or he could enter some other family, either by going to it as a younger son or a son-in-law, or by receiving the headship immediately, in a case where that family was on the point of dying out. But as the notion of the family-entity was inseparably associated with that of the business carried on by it, the same modes applied to the process of starting in business. The only courses which a respectable young man could follow were to succeed to the headship of the business of his own family, or to have his father establish him in a branch business as a branch-house, or to enter another house as an apprentice or in some higher character. He was compelled to this not only by respectable social opinion, but by the prospect of the poor success which he was likely to have in gaining custom without the help of some well established name. It is easy to see how these ideas aided in the restriction of the number of business houses. Whether the occupation was that of a wholesaler, a penmanship-master, a priest, or even a street-watchman, it was conceived of as a *kabu*, a family franchise granted by social opinion; and the only ordinary mode of entering the occupation was in some way to obtain a share in an existing *kabu*. Thus in every shop, however humble, the family was the shaping influence; the reverence for the honor of its ancestral founders, the coherence of the family life, the conservatism of the merchants as a class, all combined to this end.

Outside of the family circle proper, the idea of a business as an entity, the possession of a family, and the constant perpetuation of the spirit of unity, affected especially the apprentices and other employees of a com-

mercial house. These were taken into the household and formed a component element in its daily life. They lived on the premises; for the residence was also the shop, and back of the shop-rooms, whether spacious or contracted, were seen (and may be still) rooms and vistas of rooms, forming the family apartments, with greenery, fountains, and stone lanterns, the miniature landscape of the exquisite gardens which all the more pretentious houses possessed.

The youth usually entered on his apprenticeship at about 10 years of age. The contract of apprenticeship was set forth in a deed bearing the signatures of the boy's parents and relations; the term was limited by law to 10 years. These apprentices came chiefly from the scions of branch-houses related to the house in question; but sometimes from the families of friends, and, where special exigencies arose, from outside families. The technical term, however, was in all cases the same, *deshi* (apprentice). The ordinary name by which the youth went was perhaps "child" (*kodomo*) or "parson" (*bozu*),[1] but usually *kozo* ("little parson"). He generally received from the master (*shujin*) his necessary clothes and food, and was besides taught reading, writing, and arithmetic. While he was occupied as apprentice he was obliged to demean himself as became his position, and was not allowed to wear the tobacco-pouch, the outer garment (*haori*), or fine shoes, the customs differing more or less, of course, in each house: In some these restrictions were enforced even after he had reached a higher grade of service. Sometimes a special dress was worn by the apprentices. In the house of Tennojiya Gohei, for instance, the traditional founder of the Osaka banking business, they were required to wear the long sleeves which children's garments have. In another house their clothes had light-green linings; the customs of each house differing. As apprentices their occupation

1. Because a child's head is shaved, like a priest's.

consisted in fetching and carrying, running errands, sweeping and dusting, cleaning the garden, and the like. Nor was any exception made in favor of those youths who came from rich or influential families; for this experience in the unpleasant details of the business was regarded as an indispensable part of the future merchant's experience.

At about 15 years of age the apprentice became what was called *han-nin-maye* (half man), and took the name which he was to bear as a clerk (*tedai*). Not that he was yet a full clerk; for, as the name of his class implies, he must still do more or less of the same work that before fell to him; while he also began to receive his introduction into the mysteries of ordering and selling, paying out and taking in moneys. At 18 or 19 years of age, the *hannin* became a full clerk (*tedai*), and on this occasion a new contract-instrument was made out by the parties. Even yet, however, he was for a while occupied in part with the duties of the lower grade. As clerk he took part in the buying and selling generally, and even had a measure of discretion in important transactions. The work of the clerks, however, was of course differentiated. Some had as a special charge the book-keeping (*chobo*); others, the supervision of accounts (*chobo-kensa*); others, the transacting of sales and purchases; and still others, the affairs of external management,—in each case according to the varying habits of different houses.

Next to the *tedai* were the *banto* or chief clerks. Originally the *banto* seem to have been merely the chiefs of different sections of clerks; and this practice continued to obtain in banks, the different *banto* being designated as 1st, 2nd, and so on. In others, the *banto* formed a separate class, different from and superior to the clerks; while in some houses (presumably the smaller ones) the term was applied only to the general manager

(*shihai-nin*). The *shihai-nin* stood at the head of the affairs of the house. On him rested the heaviest responsibility, and for him was all the prestige and privilege which successful management might bring. He held the most confidential relations with the head of the house, and his advice and decision might be looked to even in the intimate affairs of family life,—the disposition of the younger sons' careers, the marriage of the heir or the daughters, the settlement of a family dispute, or the like. On the *shihai-nin* might fall, in fact, the entire control of the family and business affairs, that is, where the heir proved of no special ability. Whether the eldest son (who was always looked on as the heir prospective, unless special circumstances intervened) was required to go through an apprenticeship in the family business does not appear. Certain it is that he was seldom put out at apprenticeship elsewhere, for the expressed reason that another house would naturally be unwilling to train him for their business and then to see him taken away from them by his own family when the succession fell to him, and their labor of years lost to them. Owing to this usual succession of the eldest son as heir, it seems not unlikely that, just as the actual power in the *daimyo* families fell in most cases to the seneschals (*karo*), so in the mercantile houses the *shihai-nin* was not infrequently the real head of the business.[1] He might be some clerk of pronounced ability whose talents had secured this recognition, and in this case he might have been honored by a marriage with one of the daughters of the family or with some near relative. Or he might be the head of one of the branch-houses who had gained the special confidence of the family-master. Where his management had brought special prosperity or honor upon the house, he was treated as one of the family (*shinrui-nami*). The

1. There is a case in Part VIII which points very strongly to such a state of affairs.

respect due to a guest was accorded to him and his family, and on festival occasions he had the privilege of sitting among the members of the master's family.

The son of a faithful manager might reasonably expect to succeed him, if he proved himself fairly capable during his years of preliminary service. Nevertheless the prize was one which any employee of the house might legitimately strive for. The whole system of employment, as we have seen, was based on the promotion of those who served faithfully and well. The young clerks were not left to themselves to pick up knowledge and skill as best they could; there seems to have been a more or less deliberate effort to train them in the business and to exercise a paternal supervision. If, for instance, they made a failure of something intrusted to them, they were not punished or held strictly responsible for the loss; but the manager or the special *banto* in charge would explain the matter more explicitly to them and perhaps urge greater care. This, it was thought, was much better than putting upon them the entire responsibility and the blame, for success can only come through trials and failures, and discouragement in the beginning would only destroy their self-reliance and prevent the development of discretion and independence. Nevertheless positive misconduct or neglect of business was not overlooked. Each house had its own ways of treating such cases,—forbidding the offender to leave the premises, reducing him to a lower grade, prolonging the time of service in his present grade, and even dissolving the relation, if it came to extremes. Such a last resort, however, was of course not come to without great counselling and deliberation of all parties, for it might mean the ruin of the young man. When a clerk absconded or was dismissed, he had no opportunity of securing new employment in the same business. It was a strict rule of every guild that no house should employ a man coming from another house

without permission of his former master; and where his departure had come about through misconduct, the master would of course notify the other members of the guild and warn them against employing him. The rule was after all not an unreasonable one, the conditions of commerce being what they were; for such a person, knowing as he did the secrets of the house—its capital, customers, trade methods, and the like—could do the house great injury if he betrayed all its affairs to other employers in the same trade. Each house in the guild simply accorded to others the protection which it would wish to have in its own turn. Moreover the bonds of the commercial family were so strong that their dissolution could take place only from a most weighty cause, and the invariable resort in Japan in such cases to a preliminary deliberation by all parties would almost always be a safeguard against injustice on the part of the employer.

But these cases of course were the exceptions. The normal destiny of the employee who showed himself willing and faithful was his establishment as a branch-house at the end of a suitable period of service. This happened usually not less than 10 years and not more than 20 years from the time of his entrance into the establishment; and it was regarded as a matter of course for him who had served well. Even the clerk who had been dismissed and had afterward been taken back and had reformed might demand this favor of his master. The master bestowed on the new merchant a certain amount of capital, a house and fittings, and the privilege of using the name (*ya-go*) of his house. A number of the customers might perhaps be turned over to him, and sometimes the relations between the two were more closely cemented by the master consenting to procure for the new merchant a wife. He also made petition on the new merchant's behalf

for his admission to the guild, and after due investigation a certificate of membership in the guild was granted. The new house was known as a "branch-house" (*bek-ke*) or, sometimes, merely as a "new house" (*shin-ya*); the parent establishment was called the "main house" (*hon-ke*, *hon-ya*). The connection between the new house and the main house was thenceforward more or less close. At one extreme one finds a type of *bekke* connected with the *honke* in little more than name. The house-name (*yago*) was the same, and the same *noren* (the curtain separating the shop from the dwelling-rooms; it bore the trade-sign of the house) was kept; perhaps for a few years there was more or less of a business connection, and certain ceremonial observances—stated visits, exchanging of gifts, and the like—were kept up indefinitely. But otherwise the new house was independent. Presumably this was what happened where the employee had been marked by no special ability, and had rendered no notable service; he had received his *bekke* as a matter of custom, the relation having never become a confidential or intimate one. At the other extreme we see a *bekke* closely connected by marriage or by blood with the main house, admitted more or less into the confidence of the house (perhaps even supplying it, as already mentioned, with a manager), and coöperating more or less in its business enterprises. Its position, to be sure, was that of a subordinate only, a younger branch, and the main house had a certain right of interference in its affairs on all important occasions,—especially the negotiation of its alliances by marriage or by adoption. The benefits and privileges were mutual. To bear as *bekke* the name of some famous commercial house was an ambition well worth striving for. To possess a cordon of strong and flourishing *bekke* was to gain honor in the community and influence in the guild. To excel in this respect was to reach the pinnacle of commercial eminence and to be guaranteed forever against the vicissitudes of

fortune. A group of houses, united in this manner under a single main house, might exercise a commanding commercial power. This system of inter-connection was one of the most important features of Japanese commerce, as well as a chief element in the extension of trade, the development of its methods, and the smoothness of its workings. The main house, with its related branch houses, was the type of all the great and successful mercantile establishments. As an illustration of the system and of some of the other features of the commercial life of the times, we may notice briefly the history of one of the greatest of the mercantile houses, that of the Mitsui family.

The House of Mitsui was founded early in the 17th century in Kyoto by a man of that name coming from Echigo *kuni* in the West. Contradictory stories are told as to which of the family's masters first brought it into prominence by his energy and skill. Romance has colored its early days; but at any rate no long time elapsed before prosperity began to visit the house, and after one or two generations it found itself with branches extending to all parts of the country, the chief stores being 6 in number, one for each branch of the family. The house had taken the name of "Echigo House" (*Echigo-ya*); and as early as the last decade of the 17th century its fame was such that Kaempfer was attracted by the extent of its commercial operations to make special mention of its achievements.

The story of the success of the Echigo House seems to have been what is the story of commercial success everywhere, —keenness to seize the opportunity, large operations and small profits, with thoroughness, honesty, and fair treatment of subordinates. One of the worst features of old Japanese trade was the excessive use of credit. No sales, except of the smallest retail amounts, were made for cash, and naturally the sellers recouped themselves for bad debts by

charging high prices. The Echigo branch house in Suruga ward, Yedo, was one of the first to adopt the policy of cheap sales for cash (*gen-gin yasu-uri*). The shop soon became one of the most popular in the city, and was thronged with customers. It was 60 feet long, and 250 feet deep, and there were 40 clerks, each of whom had his own specialty, such as collar-silk, sleeve-silk, etc. An attractive feature of the shop (which is maintained to this day, as all foreigners can testify) was that the prices were fixed; there was no coming down (*kake-ne*) or bargaining; and this was appreciated even in a community where the bargaining habit prevailed.[1] Beginning with the sale of cloth, they gradually enlarged their business and included other staples, and went outside the three emporiums of Osaka, Yedo, and Kyoto, to the various provincial towns. At a later period they had three shops in Yedo, employing altogether 1,000 clerks. These were under 6 chief clerks (*banto*), who met half a dozen times a month to settle accounts and discuss the policy of the House. On any day when the sales of any of the shops reached 200 *ryo*[2] congratulations were exchanged and the clerks were feasted. In the 10th month a general meeting was held, to which every employee came; and it is related

1. As a compensation for the rigid maintenance of prices they dispensed hospitality in the same way that certain of the old foreign houses do in Yokohama to-day. Any customer who was buying at the noon hour was invited to dine with the whole company. The Yokohama custom of keeping open house in this way may have had the Japanese custom for its model. Under the new regime the Echigo house has given up its old custom; but instead of it a customer buying goods to the value of 100 *yen* is given a special dinner. 2. This may perhaps be compared to $2000 at the present day in America. It must be noted, in passing, that the conservative Japanese merchant does a much smaller business than a Western merchant would do on the same capital. The Japanese merchant employs from one-tenth to one-quarter of his capital, and locks up the rest in the bank.

that on these occasions 50 casks of wine were emptied, and the ducks for the soup alone cost 100 *ryo*. Their masters of the six branches of the family served an apprenticeship in the shop like other clerks, and lived without ostentation. There was but a single capital stock for the whole of this extensive business, and the profit and loss of the concern was made on a single account, not separately for each branch; so that the House easily surmounted the vicissitudes of trade in any particular quarter. The whole business was of course under the joint control of all, and a modest sum was apportioned to each branch for the living expenses of the family. No one family-master had the power to dispose of the family property; and if any one of them forfeited confidence or attempted to take matters in his own hand, he was forced to retire (*inkyo*) from the headship of the family, and a successor was appointed. Even in later generations the fiction was kept up that the six family-masters were brothers; and the original names were religiously preserved; for the eldest, the head of the main family, Hachiroyemon, for the next, Hachirobei, for the third, Saburobei, and so on. When Hachiroyemon died or retired, Hachirobei took his place and his name, and each one below moved up a place and took the name left by the predecessor. The result was a business in which the extreme of experience and solidarity was attained.

Late in the 17th century the House began to attract the attention of the Government. The Town Magistrate of Yedo brought the family master before the Council of State; and he was thenceforth enrolled among the Government-merchants (*go-yo-tashi chonin*). These were rich houses who advanced money and furnished supplies to the Government, and they naturally occupied the most influential position and possessed special opportunities of increasing their wealth. In the early days of foreign settlement in Japan, when the Government was suspicious of the intentions of the

foreigners, and wished to put the trade into responsible hands on the Japanese side, the Mitsui House was told to go to Yokohama and take charge. But the House did what every other conservative house had decided to do; it refused to go. Only after peremptory commands did it establish a branch in Yokohama. This reluctance of the respectable and solid business-houses to take part in the trade with foreigners is at once a characteristic of old Japanese commercial life and a key to much of the unfortunate misunderstanding which has since given rise to certain generalizations on Japanese character peculiar to a class of foreign residents in Japan.

The story of this House, with what has been said of the membership of a mercantile household and of the system of branch-houses, will perhaps suffice to give a general notion of the organization and methods of the ordinary commercial house. Of the differentiation of trades and industries, the inter-connection of the different branches, the methods of distribution and exchange peculiar to each, the monopolies and privileges enjoyed, one is tempted to write more at length. But there is space here for only a few words upon a single topic,—the commercial guilds. Before proceeding to that, however, it will be worth while to note the chief classes into which the various commercial houses of each trade were divided.

In the commercial transactions of the time the figures that appear most prominently and most often are five,—the producer, the carrier, the wholesaler, the broker, and the retailer. With the first (usually called *ni-nushi* or freighter) we are not here concerned. Of the second something will be said later. The wholesaler (*toiya*, usually pronounced *ton-ya*) was perhaps the leading figure in the commercial world. There was little or none of the manufacturing on a large scale which has characterized European and American industry since the end of the last century, and there was a large class of wholesalers who acted at the same time as

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capitalists or undertakers for the farmer and the artisan. Custom required that the *toiya* should be the invariable medium of distribution, and that next to him the broker (*nakagai*, middleman) should intervene. The brokers usually belonged to the same guild as the *toiya* though they might form a separate division of it. The *toiya*, however, seem usually to have acted as not much more than commission merchants, and possibly this would be a more accurate designation for their class.

A brief survey of the operation of distribution in one or two of the trades will illustrate more clearly the functions of the different members of the commercial circle and the operations of trade. The *toiya* of Osaka were of two sorts, first those who exported to Yedo, the great consuming market, the merchandise that poured from all sides into Osaka, the great distributing centre. These were known as *kaisen-donya* (exporting houses) or *Yedo-gumi* (Yedo guilds), and seem to have been fewer in numbers and more clannish than the second class. Something will be said of their operations in speaking of the guilds. The others, known as *shokoku-gumi* (guilds of various provinces) were the receivers of the merchandise from the various producing quarters. These guilds were larger, and new houses could join without difficulty. Each trade of course had its special regions from which the bulk of the production came. The timber dealers, for instance, looked principally to the provinces of Owari and Kii, and after these, to the island of Shikoku, where stood the forests of Tosa,—the forests whence, bringing true a popular saying, liberty sprang forth in the days of 1876 and later. Goods might be ordered by an agent of the *toiya*, who went into the interior and ordered what was wanted. Or the goods might be made in pursuance to a written order received from the *toiya*, specifying the goods according to quality, trade-mark, etc. In these cases the term *chumon-shina* (merchandise to order) was employed, and the wholesaler usually made an advance

payment (*zen-kin*) or payment on account (*uchi-kin*). This advance might amount to two-fifths or even one-half, according to the custom of the trade. There might or might not be a written contract, according to the custom of the trade and the complexity of the stipulations. The time allowed was a fairly long one, especially where the goods were to be brought by sea,—it might even reach 6 months or a year. Consignments were often made, however, without a previous order, and in some trades—the timber trade, for instance—the bulk of the business was done in this way. Such merchandise was known as "consigned goods" (*okuri-mi*), in distinction from "goods to order" (*chumon-shina*).

The seller himself might come on with the goods, either as supercargo (*uwa-nori*, above-passenger), or as his own skipper; but more generally they were given into the hands of an ordinary carrier. In the cotton goods trade, at least, and very likely in others, the risk and expense of transportation were upon the seller. The mode of settlement varied according to the trade. In the salt trade payment was made by the *toiya* in the month succeeding delivery; in the timber trade, usually on delivery and sale; in the cotton-goods trade the settlement was sometimes upon delivery; but here and in other trades it was not usual to settle until after the sale of the goods by the *toiya*, because the *toiya* was paid by a commission on the price received.

Arrived at the wharf or river-bank, the consignee examined the goods, compared them with the bill of lading, and, if they were satisfactory, set his seal by way of receipt in the pass-book (*hantori-cho*) of the captain, and took delivery. The bill of lading (*okuri-jo*, letter of consignment), of which one or two samples appear in Part III, appears usually to have been sent along with the goods, but packed inside the wrappings so as not to be taken out until it reached the consignee. It was in form a letter from the consignor, directing the captain to deliver to the person named as

consignee the goods specified. Where there was a land-route available as well as the sea-route, it is probable that a copy of the bill of lading or a receipt by the captain was sent independently to the consignee, but this could hardly have been usual.

The delivery was made, in the case of cotton goods and the like, within the premises of the *toiya;* for the warehouses of *toiya* in the same trade usually stood close together, near the bank where it was customary to land the merchandise they dealt in. But timber was merely placed on the bank and sold from that place; while salt was sold from the vessels, in order to avoid the waste consequent upon an additional loading and unloading. But the sale must in every case, as has been said, pass through the hands of the appropriate *toiya*. Where the goods had been specially ordered, the *toiya*, being consignee, of course had a claim upon them; but even where the merchandise was *okuri-ni* (not ordered), the seller was subject to the monopoly of the *toiya* guild. This was a not uncommon source of controversy—the right of a particular house to act as *toiya* or the prescriptive privilege of a particular consignor to sell directly to the retailer, and a number of cases of the sort will be found in Part III. The vegetable guild in Osaka, for instance (which numbered 40 wholesale houses and 150 brokers' houses[1]) had the control of the 12 leading vegetables, which could not be sold in any other market than theirs; and any secret selling, if discovered, was punished by the town authorities. Within the trades there might be a division of monopolies,—salt fish and fresh fish, for example, were sold at different markets. When a dispute as to privilege arose over a sale of perishable goods of this sort, a middleman (*chusai-nin*)

1. The number of brokers' houses seems usually to have been the larger.

was appointed, who sold off the fish and deposited the proceeds with some reliable person until the controversy was settled.

The sale took place, as has been indicated, in most cases by auction,—sometimes by written bid, but usually in an open air market with oral bidding. The purpose of selling by auction, of course, was to obtain the best possible price for the goods, because the *toiya*, as has been said, was usually paid by a commission. In the timber trade the *toiya*, when a timber-cargo was expected, announced it for some days before hand, by hanging out a paper advertisement stating that on such a day timber of such a sort from such a province and to such an amount would be auctioned to the brokers. At the appointed day the timber is unloaded along the bank, the wholesaler and the brokers assemble, with a "recorder of sales" (*uri-kata-cho-tsuke*), and the sale proceeds. As each lot is bid off the recorder enters in his book the kind, number of pieces, broker's name, and price. From the moment of this entry the stock is the broker's and at his risk. Delivery is usually postponed till the succeeding day, when a memorandum of amounts and prices is given to each buyer; but if desired, the timber may be left (by the well-known transaction of *kai-azuke*, buying and leaving on deposit) by the broker on the premises of the *toiya*.

After the close of the sale, the price having been thus determined, the *toiya* settles with the consignor or his representative (unless by the custom of the trade, as already mentioned, the settlement is made at a later date). The broker, as we shall see, has not yet settled with the *toiya*; nevertheless the *toiya* guarantees the obligation of the broker, or rather takes it upon himself, and pays over the price bid at the auction, less the *toiya's* own commission. This commission (*kosen*) was, in the timber trade, 10 per cent., the *toiya* paying the expenses of unloading. In the salt trade the commission was 3½ per cent., but these

were regarded as specially high rates. If the *toiya* had already made advances (*zenkin*, *uchikin*) at the time of ordering the goods, this advance was of course deducted from the price, and only the balance (*shikiri-kin*, final sum) paid; while at the same time a balance-sheet (*shikiri-gaki*) of the transaction was handed to the consignor and the proper receipts taken and entries made.

There were apparently greater variations of custom in the modes of settlement between brokers and *toiya* and between retailers (*ko-uri-nin*) and brokers. In the vegetable trade both settlements were to be made at the end of 60 days (the retailer handing to thebroker and the latter to the *toiya*). The broker was the guarantor of the retailer's credit; for if payment failed at the time appointed and subsequent demands were fruitless, the broker might be posted in the market for non-payment (*fu-harai-fuda*, non-payment placard), and so long as the claim remained unsettled he could not buy in that market. In the fish trade the transactions between *toiya* and brokers were often for cash (*gen-kin uri*, ready-money sales). When the sale was on credit (*nobe-uri*, sale with postponement), the broker must obtain the indorsement of a fellow-broker as guarantor, who was responsible in case of the former's default. In the sale of Satsuma sugar, the lots were bid off in the name of the division of the brokers' guild (there were 7 divisions) to which the buyer belonged; and the division was responsible for payment. But in sales of Tosa sugar each broker bought on his individual responsibility. In the timber trade the brokers settled at the end of 60 days. In the salt trade the time was 30 days; while the retailers paid cash to the brokers on the spot, or at the most, within 8 days.

We are now able to turn to the organizations which controlled the monopolies already mentioned,

prescribed the methods of each trade, and enforced the rules of fair dealing between merchants,—that is, to the

7. *Guilds.*

The earliest legal document relating to the Yedo guilds is said to be a town-proclamation of 1651 (Keian, IV), concerning transfers of shares in the bath-house (*furo-ya*) guild. It runs: "The sale and purchase of bath-house trade-signs[1] is hereafter forbidden, except between relatives. Even in those cases the transaction must be acknowledged before the parties' five-men companies and the householders of their wards and be sanctioned by the Three Elders." The early history of the guilds, and indeed of commerce in general, must always be difficult to revive completely, for the records of various epochs have been seriously diminished by the great conflagrations which visited Osaka and Yedo from time to time. But it seems clear that the guilds received little official sanction until the 18th century. Before that time there had been guilds, and they had restricted the number of houses possessing shares (*kabu-nakama*, shares in the guild), that is, doing business of that sort; but the restriction seems to have been accomplished chiefly by the methods of moral compulsion to which a Japanese community is so sensitive, and without the aid of a franchise from the Government. It is easy to see that the persistent notion of a family as a *kabu*, a commercial entity, must have

1. *Kamban* was the upright wooden sign in front of a shop, bearing the name of the house or of a special article sold there. The transfer of this was the transfer of the right of doing business. The *noren*, or split curtain between the shop and the living-rooms, had a similar importance.

led to certain restrictions on new enterprises, restrictions resting on social opinion, not official intervention; and the final refusal of certain venturesome ones to submit to these restrictions seems to have led the majority to resort to the authorities for the sanction and the defence of their customary privileges.

The term for guild was sometimes *nakama* (companions), but usually *kumi* or *kumiai* (company, association). Among the earliest guilds having legal monopolies were those of the retail rice-houses (*komeya*), the fish-stands,[1] the pongee-silk stands, the cypress-article stands, the sundry-merchandise stands and the peddlers' stands. We hear also in Yedo of the bath-houses, in 1651, as has been said. In 1659 a town-proclamation of Yedo declared the limitations upon the peddling of goods: "From to-morrow the peddlers' business shall be subject to official inspection. The following only shall be allowed to peddle: Disabled persons above 50 or below 15 years of age;[2] sellers of silk pongee, of hemp cloth, of cotton cloth, of paper articles, of musquito netting, of tea, and of second-hand clothes; and hairdressers,[3]—all those who were lately recorded in the register." The money-changers (*ryo-gaye-ya*) were given a legal monopoly about 1720 (at that time they numbered some 600); and it was only towards the end of the last century that in Yedo official sanction was given to the majority of the guilds. Those of most importance, of course, were the wholesalers (*toi-ya*).

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1. *Za* means "seat," but the Japanese sit where we stand. Here *za* probably indicates the place where a man spreads out his wares; and it is especially appropriate for the peddlers, who do not go about, as ours do, from door to door, but spread their wares, generally by night, at the side of the street, and sit on a piece of matting waiting for purchasers. 2. This must mean that such persons could peddle any articles. 3. In those times the hairdressers were itinerant and plied their trade in open spaces along the street.

Next to these were the rice-brokers (*fuda-sashi*), the bath-houses, and the hair-dressers. Then came the guilds of the artisans, the guilds of the Government-merchants, and the guilds of contractors (*ukeoi-nin*),—contractors for river-cleaning, for garden-making,[1] for aqueduct-repairing, for road-repairing, and for bridge-building; and besides these there were to be reckoned guilds of merchandise-boats, passenger boats, water-boats, and even mud-scows. Altogether there were in Yedo in the early part of this century some 60 guilds of all sorts.

But it was in Osaka that the guild was to be seen at its best. Commercially, as well as geographically, Osaka was the central point of Japan, and especially in manufactured articles the control of the trade was in the hands of the Osaka wholesale-houses. Those of Yedo were largely dependent upon Osaka, were in fact, in perhaps a majority of cases, either originally or actually mere branches of great Osaka houses; for Osaka had been a prosperous city while Yedo was yet only a new castle-town, and when the capital of the Tokugawas came to have dominant political importance and to be thronged every year by the multitude of visiting vassals, the thrifty Osaka merchants sent down their agents, and, by establishing branch-houses of their own, managed still to keep control of the trade of the country. Thus the original source of distribution was Osaka, with its *o-toiya* (chief wholesalers), and from there the merchandise found its way to the intermediate and smaller centres. The Yedo merchants never had either the capital or the character of the Osaka merchants. The constant sight of the luxury and prodigality which long years of peace brought about in the Tokugawa *samurai*

1. The sight of the huge slabs of stone, quarried in the interior, which form a feature in all large Japanese gardens, would suggest how it was that the furnishing of garden-supplies might easily fall into the hands of contractors.

induced similar ambitions in the merchants; and the dependence of the Yedo trade on the patronage of the nobility led to a habit of flattery, fawning, and bribery, which could not but have an evil effect on commercial manners. To the system of unlimited credit and reduplicated debt which began with the nobility, great and small, and extended to the dealings with other classes, was due the unnatural and inflated condition of trade which characterized Yedo in the first half of the present century. This led inevitably to the Nullification Order of 1843 (given in Part III), which swept away the accumulation of debt and enabled the merchants to start again upon a cash footing. In Osaka the manners of the Court had never exerted such an influence on commercial habits; for the Castle possessed a comparatively small contingent of *samurai*, and the necessity which constrained the great *daimyo* of the central and western regions to sell their rice in Osaka placed them in competition with each other for the favors of the capitalists and made the merchants rather than the nobles the masters of the situation. In wealth and standing the Osaka houses far outranked those of Yedo. Their names and their prosperity dated back two centuries or more, and the heads of the houses carefully cherished the traditions of their establishments. The managers, clerks, and apprentice-boys were generally sent at an early age from the provinces where the master was born, and the employment descended from father to son. So extensive was the business of some houses that many of the employees were said never to have seen the master's face. Integrity and reliability were the characteristics of the typical Osaka house. Credit was so solid that bills and notes passed freely from hand to hand, and after a long circulation come back to the drawer or maker without the intervention of banks.

It was in such a community that the highest commercial development of the country was reached, and the

guilds must be studied chiefly in Osaka.[1] Here, as in Yedo, they existed long before they received official sanction and legal monopoly. Some of the privileges were given (or sold) as a reward for particular services performed. Thus in the middle of the last century the drug-sellers were so honored for their services to medicinal science. The oil-sellers were similarly treated as a reward for supplying the Emperor's palace with oil. The inns of Osaka were given a monopoly in return for the large amount of money which they gave for the repair of certain city bridges, and the builders for their services in repairing the great temple of the Emperor. But it was not until after the periods Meiwa and Anyei (1764-1780) that the guilds were generally recognized. During those periods the increase of trade was such that the old guilds found themselves unable to control the new men, and they applied to the Government to sanction the monopoly which the guilds claimed. This was done, and thenceforward each guild was accustomed to pay annually to the Government a sum called "thank-money" (*myoga-kin*), in effect a fee, and to make gifts (*mu-dai-mono*, things without a price) of the articles in which it dealt. The guilds at that time numbered about 100, and included the wholesalers and brokers[2] for rice, vegetables, oil, fresh fish, drugs, dried fish, timber, and so forth. Of these some had several thousands of members, others less than a score. For

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1. There is but one scholar who has given special study to Japanese guilds, Mr. Matsuzaki Kuranosuke, lately lecturer at the Imperial University, and now studying in Germany. He has made a unique collection of the Osaka guild-constitutions. But among the scholars of the older generation Professor Komiyama Yasusuke has the widest acquaintance with the details of the old commercial life. 2. The wholesalers (*toiya*) and brokers (*nakagai*, go-betweens) for the same article were often in different guilds or divisions of the same guild.

nearly two centuries the guilds as a whole seem to have been dominated by a combination of the most powerful of them, including the trades concerned with the great staples of commerce,—cotton, dry goods, iron-ware, paper, oil, drugs, earthenware, matting, lacquered ware, and wine. This was known as the "ten *kumi*" (ten companies or guilds); and late in the 17th century a similar combination was made in Yedo. The two acted together and seem to have coöperated with the shipping guild to control the whole trade between Osaka and Yedo. As time went on, many of the original 10 *kumi* divided into two or more, each taking a special variety of merchandise, and it is difficult to trace the original organization. Early in the 17th century the wine guild broke away completely, and the term used thenceforth was often "nine *kumi*." But we find the enumeration and the names of the trades changing at different times. In the present century, however, the combination appears to have revived the original name, though with constituent trades differing somewhat; and the increase of its power helped to bring about the popular dissatisfaction which culminated in the severe measures of 1841-2.

One of the difficulties in examining the organization of the guilds is to distinguish between the guild proper and combinations such as the above. The term *kumiai*, sometimes *kumi* (company), is applied to the guild as a whole; and thus the combination was known as the "ten *kumi*." But each guild might be subdivided again into administrative groups, and these were also known as *kumi*. Thus, the timber guild was divided (in later times) into 7 *kumi*,—cypress, cedar, ship-timber, shingle and a brokers' *kumi* being among them. The seven *kumi* of the cotton guild were named from the wards in which they had their places of business. There was a large guild of wholesale houses in Osaka importing from various quarters, and the three *kumi* were divided

according as their merchandise came from the north coast, from Satsuma, or from Tosa. Thus there seems to have been no fixed rule for the formation of *kumi*. It would seem that each group termed *kumi* did have a certain coherence and independence of its own, while in larger questions of policy it was under the control of the higher body. Another obscure point is the relations between the brokers, wholesalers, and retailers of each trade. Still another is the guild-relation, if any, between the houses respectively importing into Osaka from the interior, retailing in Osaka, and exporting to Yedo the goods of any particular line. The 10 *kumi* above spoken of were known as the "Yedo-exporting houses," and they appear to have had a different organization from the houses who dealt directly with the producers by advancing capital and securing their product.

Premising these difficulties and obscurities, we may look briefly at some of the general features of individual guilds. The organization was that of a number of shareholders (*kabushiki*) united into an association (*kumi*). There were managers of various grades,—a *so-gyoji* (general director), a *toshi-gyoji* (director for the year), and a *tsuki-ban* (inspector for the month). The *toshi-gyoji* seems to have been set over the lowest group known as *kumi*; the *so-gyoji* probably officiated over the larger *kumi*; and there was sometimes a still higher officer, the *o-gyoji* (chief director). The number of shares was fixed by the Government, but could apparently be increased on request of the *kumi*. Each shareholder had a share-certificate (*kabufuda*, *kabu-chomen*). The numbers of shares in the different *kumi* differed greatly, as has been said. A few of the numbers are:[1]

Rice (wholesale)	1,351
Vegetables (")	40

1. The periods of most of these are not known, but they must have been before the end of the last century.

Vegetables (brokers)	20
Wax (")	120
Oil (wholesale)	9
Oil-lees (")	273
Drugs (")	273
Books	50
Pawnbrokers	613
Bath-houses	2,004
Money-changers	52
Wine	707

The rules of the guild (*moshi-awase jomoku, nakama joho*) were made by themselves, and were entered in a large book, in which the members of the guild set their seals. A glance at the rules of the company of salt fish and dried sardine wholesalers will give an idea of the general features of the management.

"Instrument of Anyei, X, 4 (May 1781).

"The regulations recently agreed upon between the five *kumi* of salt-fish, dried-fish, and dried *bonito* will of course be obeyed by this *kumiai* (association). But we have also agreed upon the following articles to be observed by us:

"1. No member of this *kumiai* may employ one who has come from employment under another member without learning whether he was faithful to his former employer and left him rightly or not; for this purpose inquiries should be made of the former employer as to whether there is any reason why the person should not be employed; and if there is he must be rejected.

"2. When a new branch-house is founded by one of the wholesale houses belonging to this *kumiai*, or when a clerk after serving a wholesale house several years and becoming thoroughly acquainted with the business, has left his employment without fault on his part, an application from such an employer or branch-house for a share in the

guild may be made to the director for the year, and if a recommendation is brought from the former employer or the main-house, the share may after careful investigation be granted. No recommendation of any other sort shall suffice.

"3. The same rule shall apply to clerks engaged for six months only, if they have served for several years. But in no case shall a share be given to one coming from another *kumiai*.

"4. When any shareholder wishes to assign his share he must report to the director for the year and await the permission of the guild. This obtained, he must file with the director for the year an instrument reciting that there is no one who has any right to oppose the assignment.[1] Private assignments will not be valid as against the *kumiai*.

"5. When an investigation has been made as to the person who desires to receive the share, and the assignment has been allowed and made, the assignee must file an instrument engaging to pay without fail the annual thank-money to the Government and to obey the rules of the *kumiai*.

"6. If any member of any of the guilds defaults in a debt owed to any member of this guild, and the latter wishes to bring suit for its recovery, he must first give notice to all the members of the guild, and those houses who also have credits against the debtor must consult and determine whether to bring suit at the same time or to wait. In such cases consideration must always be shown for the interests of others.

"7. No member may adopt a *ronin* (masterless person) who has once been adopted by another member and afterwards divorced,[2] if the first adopting family objects, nor may

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1. That is, there is no incumbrance on the share. 2. The same word *(ri-yen)* is used for the divorce of a wife or husband and the sending away of an adopted child.

any recommend him to another. The violation of this rule would cause dissension among us.

"8. All regulations made by the *kumiai* at a general meeting shall be observed by each member, even though he was prevented by business from attending the meeting.

"9. All members must, on notice from the director for the year, attend the meetings of the *kumiai* and the joint-meetings with other *kumiai*. Absence from the meeting is no excuse for not obeying its decisions.

"10. The office of director for the year shall be filled by each member in turn. But if the one whose turn has arrived is ill or too young or too old, the director for the expiring year shall name another person for the office, and, this decision shall be final. The person acting as director must conduct himself with honesty, carefulness, and diligence.

We have all agreed as above; any one violating these rules shall be treated as the guild shall upon deliberation decide. In testimony whereof we hereunder set our seals."

The entrance of a new member or the assignment of an old share was not a simple matter of paying the money and getting the certificate. It was made a formal occasion, and there were certain largesses to be paid (as in the case of land-transfer already noted) to the various parties interested. The fees, in addition to the price, payable by the receiver of a share of the cotton guild during the Bunkwa period (1804-18) were:

1. Where a new share was created:

To the guild, as entrance-fee ..... 50 *ryo*, gold,
" " chief clerk[1] ..... 3 *ryo*, " ,

1. It would seem that this transaction was looked on as a grant or privilege from the old house or master; the original document mentions merely the wife, clerk, etc., but we must suppose that it was those of the head of the family or house just left.

To the wife ..... 3 *bu*, " ,
" " son ..... 2 " , " ,
" " parents..... 2 " , " ,
" " servants ..... ad. lib.;
besides the cost of the new seal, of a general feast, etc.

2. Where a share was assigned to another member :
To the guild, as entrance-fee ..... 30 *ryo* gold,
" " chief clerk[1] ..... 3 " " ,
" " parents ..... 2 *bu* " ,
" " wife ..... 2 " " ,
" " son..... 2 " " ,
etc., etc.

3. Where the assignee was a relative of the assignor :
To the guild ..... 5 *ryo* gold,
" " chief clerk..... 2 *bu* " ,
" " wife ..... 2 *ryo* silver,
" " son ..... 1 " " ,
Expense of the feast..... 5 " gold.

4. Where the assignee was a relative of another member :
To the guild ..... 20 *ryo* gold,
" " chief clerk..... 2 " " ,
" " wife ..... 2 *bu* " ,
" " son ..... 1 " " ,
and the expense of a feast.

Where a son succeeded to the family headship, a fee of one or two *ryo* was paid ; and a change of name or of seal or of residence was also accompanied by the payment of a fee.

About 1840, or just before the abolition of the guilds (to which reference will be made), the prices of the shares of some of the guilds[2] were as follows :

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1. Here the reference seems to be to the clerk, etc., of the assignor. 2. In Yedo.

Trade		*No of Shares*	*Price*
Salt-importing	(wholesalers)	4	2000-4000 *ryo.*
Salt	(brokers)	21	500 "
Wine-importing	(wholesalers)	38	" "
Rape-seed oil	(")	21	" "
Paper	(")	47	" "
Dried sardines	(")	15	300 "
Earthenware	(")	36	" "
Salt fish	(")	34	200 "
Dyes	(")	38	" "
Matting	(")	37	100 "
Iron and copper ware	(")	65	" "
Wax	(")	20	1000 "
Cotton cloth [1]	(")	22	" "
Timber	(")	275	20-100 "
Stone	(")		200 "
Bath-houses		516	200-1100 "
Hairdressers		800	50-1000 "

Of the successive prices at different periods the only table that has been obtainable is one for the *fuda-sashi* shares,—the rice-brokers who bought directly from the *samurai*. These were;

In 1788..... 500 *ryo*,
" 1789..... great depreciation on account of reorganization of the guild.
" 1791..... 100 *ryo*,
" 1800..... 150 " ,
" 1810..... 500 " ,
" 1817..... 570 " ,
" 1840.....1000 " .

Needless to say, the share-certificate, representing as it did a combination of good-will and franchise, was

1. Down to here the trades were included in the "ten guilds."

frequently used by its owner for raising money temporarily Here is a document of pledge, given by one who has borrowed money on his certificate:

"Instrument of Pledge of a Share
of the Salt-fish Wholesalers.

"I, the undersigned, have borrowed of you —— *ryo* in silver, and as security my wholesaler's share-certificate has been handed to you. I shall without fail repay you within the next —— months; but if I am unable to do so in that time, I shall transfer the share-certificate to you, after reporting to the director for the year. For future testimony I make out this instrument, on the —— day of the —— month.

A. B.
of the 13-men company,
salt-fish wholesalers.

To C. D.

I have examined the above and in token set my seal below.

E. F.
director for the year of
the 13-men company,
salt-fish wholesalers."

If the borrower found himself unable to pay, he gave to the director for the year an instrument of the following tenor:

"In this month falls due the loan from C. D. for which my share has been pledged, but as I cannot pay, my share is likely to pass to C. D. Will the *kumi* be kind enough to pay for me and get back the share, or will it transfer the share to him? Do as you think best after hearing the opinion of all the members. I have notified you because the time for payment is near. I shall have no objection to interpose, no matter to whom you may transfer the

share; and I certify that there is no other person who has any claim to the share.

A. B.
of the 13-men company.

To
the Director for the year
of the 13-men company."

About the middle of this century the guilds met with a sudden disaster. They had been growing more and more powerful for 50 years, and, as the above series of prices indicates, their privileges had been bringing in profits constantly greater. It was almost impossible for new shops to be opened, and prices reached an exorbitant level. The guilds had resorted to the world-old expedient of cornering the market,[1] by buying up the whole of a product and selling it when the price had risen to suit them. The people complained loudly and the Government (the moving spirit being Mizuno, lord of Echizen, presiding Councillor of State) abolished the whole system of guilds and shares, in a series of proclamations issued between 1841 and 1842, two of which lie before me. The prime objects of the measure were to secure lower prices and freedom of industry, and the most radical rules were laid down. The terms *kumiai*, *nakama*, *toiya*, *fuda*, *nakagai*, etc., were to be given up; the payment of yearly "thank-money" and of all other guild-burdens was abolished; no merchant should be merely a wholesaler, but all should also sell at retail; wholesale and retail prices should be the same; there was to be no buying up of large quantities and holding for a rise, and retail selling was in no case to be stopped; and finally all prices were to be lowered 20 per cent. and a schedule of the reduction be posted in front of every merchant's shop for official inspection. But these legislators soon found that the evil they

1. *Shime* (squeeze, shut)-*kai* (buy), *shime-uri* (sell).

had created was greater than the evil they had abolished. The guilds were gone and their rigid control of trade was gone; but with this had disappeared also the very foundation of trade,—commercial confidence. The guilds had worked to build up their own interests, but they had also, in so doing, served the interests of general prosperity by establishing wholesome rules of commercial honor, by creating central tribunals enforcing public commercial opinion, and by placing each and every branch of trade on the firm footing which concerted action could not fail to give. When this framework of guilds was withdrawn, there was a melting away of the commercial structure. Mutual confidence disappeared; the value of the shares shrunk to nothing,—a result which crippled every possessor and destroyed at once the merchant whose honesty had been his chief capital. It was no longer possible to borrow money on the shares, and there was a general contraction of business on all sides, which naturally had a disastrous effect on the producers and ultimately on prices. The people (for the step seems to have been the result of popular clamor) found that after all they had not been so unfortunate when the guilds were flourishing; and before ten years had passed the elders of Yedo were laying before the Government a petition for the re-establishment of the old order. It was conceded on all hands that the abolition-measure had been a failure; and in April, 1851, the guilds were re-established. Not, however, with all their power to oppress the people; for while the yearly fees were no longer required, the limitation of shares, and indeed the share-certificates themselves, were no longer allowed. The guild-members were registered at the town office, and their ancient regulations were restored; but all new-comers were to be freely admitted as members, unless special exigencies, approved by the Government, required restrictions. Thus it was sought to retain all the influence for good which the guilds were capable of exerting, and at the

same time to take away from them the power to restrain by artificial modes the natural courses of trade. The whole operation of abolition and restoration is one which would well repay the further study of the economist.

Such, in outline, was the guild system.[1] We have seen what interconnection there was between the guilds of Osaka and Yedo and how those two great centres were bound together in commercial relations. Some explanation is now necessary of the methods by which this connection was effected,—of transportation, money, banks, and negotiable instruments. And first of

8.—*Transportation.*

The physical conformation of the country, as has been more than once pointed out, is decidedly unfavorable in natural facilities for transportation; for the chain of mountains which divides its narrow length from one end to the other not only makes difficulties for the passage from one coast to the other by roads, but also prevents the formation of natural water-ways. But these hindrances alone do not account for the backward condition of land-transportation under the Tokugawas. Nor is it enough to say, as many have said, that there were few good roads; there were enough to show that others would have been forthcoming had they been desired. Nor yet is the lack of horses a sufficient explanation; for the condition was little better where horses were best and plentiful. The reasons why there was nothing

1. It has been impossible to learn anything of the artisans, guilds; but these are fortunately not so important for our present purpose.

better as a usual means of land-transport than pack-horses, bearers, and a few bullock-wagons, seem to be the same that account for the antiquated junks and the tedious voyages of sea-transportation,—first, a disregard for the value of time, and, second, a lack of inventiveness. No people that had possessed in a strong degree the commercial energy which prizes time and seeks to conquer nature for mercantile uses could have put up with either the junks or the pack-horses as long as Japan did. There was natural material in abundance, and there lacked only the putting of the hand to the work. No doubt the repressive interference of the Government contributed greatly both to diminish the size of the mercantile marine, and to intimidate the spirit of invention, by preventing that free and constant intercourse with foreign nations which is more the source of general progress than Europeans usually realize. There are many reasons why the Tokugawa Government must stand high among the dynasties of the world; for while Europe was engaged in persistent, if intermittent, mutual slaughter, the Tokugawa Shogunate brought a nation of 20 millions out of a state of incessant bloody war and maintained an effective peace for 250 years among scores of petty principalities which had for several centuries known nothing but dynastic discord. But one thing we can never forgive the Tokugawa Shogunate,—the proclamations by which it not only closed the country to foreigners, but forbade the departure abroad of its own subjects. In 1636 the third Shogun, Iyemitsu, ordered the destruction of all ships of Western build and restricted the Japanese junks to sizes suitable for coasting only, and by this measure the nation was for two centuries shut out from one of the greatest opportunities for commercial progress.

The sea-ways, however, always remained the chief paths of internal commerce. The land-roads were used by the couriers (who, on horse or on foot, were in general use) and by the packhorses and bearers, whose business was chiefly

the transportation to and from interior towns. The greater popularity of sea-transport was of course due to its cheapness. It is not easy to find the figures for an accurate estimate of the difference in the cost of the two modes, and the rates changed from time to time; but the trip between Osaka and Yedo must have cost at least twice, and probably five or ten times, as much by land as by sea, for bulky staples like rice, cloth, etc. The consequence was that the great rice traffic, and the bulk of all the Osaka-Yedo trade, sought the sea. There were three principal rice-producing districts from which that staple was exported to other parts of the country,—the provinces of Hyuga in Kyushu, the northwestern provinces of Echizen, Echigo, Kaga, and Noto, and the north-eastern provinces of Oshu and Dewa (the old names for a number of provinces since carved out of these). From the first two the export was all to Osaka; from the last to Yedo. The port of the first district was Kumamoto, and the journey to Osaka (going around north of Kyushu and stopping at Shimonoseki) in favorable weather took about 20 days,—a distance of less than 400 miles.[1] Niigata was the main port of the second district, and the voyage to Osaka was some 800 miles in length. The custom was to start from Niigata in the late spring, and, sailing around by the south, to reach Osaka in the summer or autumn, the time being from 3 to 6 months. Then the vessels lay up in Osaka during the winter and returned in the early spring, a full year being the allowance for the entire trip. Both the Kumamoto and the Niigata vessels called at Shimonoseki on the way, and continued or not to Osaka according as the latest rice quotations were favorable or not. The port of the third district was Sendai, and the rice from this

1. These figures are based on the reports of H. B. M.'s Consuls on internal transportation, in the Blue Book for Japan, 1878, No. 2.

quarter went to Tokyo. The difficulty and expensiveness of this route of 200 miles may be seen from the difference of rice-prices in Sendai and Tokyo in the seventies of this century: rice was selling at 5 *yen* per *koku* in Tokyo and at only 3½ *yen* in the Sendai region.

But the route of greatest importance in shipping was that between Osaka and Yedo, the two great commercial centres,—a distance of something less than 400 miles.[1] This did not begin to be of any importance until the middle of the 17th century; but by the end of that century it had practically engrossed the whole of the through freight traffic between those two ports, much to the dismay of the Tokaido towns, which strove in vain to have sea-traffic restricted. The chief vessels were the *hishigaki-bune* or red-railed ships, so called from the red railing which surrounded the deck, and the *taru-bune* or cask-ships, which were of lighter capacity and greater speed, and were used chiefly for wine-transportation. The larger vessels above 1000 *koku*[2] capacity were divided into 3 classes, according to speed, and were known as "numbered ships" (*bam-bune*). In the 11th month of every year there was a race from Osaka to Yedo, by which the class of the vessel for the ensuing year was determined. The total number is variously stated, but about 1810, when the neglect to make necessary repairs had caused numerous wrecks and the freighters had lost the (in Japan) vast sum of nearly 400,000 *ryo*, it is said that the number of ships fell to 38. In the present century the number seems to have reached 600. The management was in the combined hands of the 10 exporting *kumi* of Osaka, the 10 importing *kumi* of Yedo, and the shipping

1. The following statements are founded chiefly on records of the Town Magistrate's Office and in particular on the relation of an old merchant consulted by the Magistrate in 1829 as to the customs of the trade. 2. 1 *koku* = 5 bushels = about one-sixth ton.

guilds. In fact the origin of these Yedo *kumi* is ascribed to the disputes which constantly arose between the Osaka freighters and ship-owners on one hand and the Yedo importers on the other; for the latter had always acted each for himself, there being no central organization to lay down rules of average, rebate, and payment, and to remedy this the Ten Companies of Yedo were formed. The organization as thus completed seems to have consisted of four corps of inspectors at each end, under the control of the general directors and chief director of the Ten Companies. These inspectors or "black-stamp holders" (*koku-in moto*) were so called from the branding-iron (*yaki-in*) which was the mark of their office. There was a central assembly-office for freight-shipping (*mawashi-bune-kwaisha*), where applications were made for the registry of new ships and for the transfer of existing ones. The settlement of all this was in the hands of the inspectors, who gave a wooden ticket bearing their brand and registered the speed, sails, capacity, etc., of each ship. Every ship-owner had to pay his share towards the expenses of this assembly-office. Here also was kept a record of the arrival and departure of each vessel; for notice had to be given to this office when the ship left Osaka, when it arrived at Yedo, when it left again, and when it reached Osaka. This assembly-office was, in short, the Lloyd's of Japanese shipping. When the lading of a ship was finished, an itemized bill of lading (*mokuroku, okuri-jo*), describing separately the cargo and the ship's stores, was made out and was countersealed by an inspector, and notice (probably with a copy of the bill of lading) was sent to the consignee. At the port of Uraga (in early days, at Shimoda) all ships must touch and obtain from the Government official a ticket permitting them to go on up to Yedo. On arrival at Yedo an inspector took charge, examined the goods and estimated the injuries received, if any; and, this completed, the freight could be paid. On the upward journey (it was "up" from Yedo, and "down"

from Osaka) a second ticket was taken from the shipping office at Yedo and left with the Government officer at Uraga, with the ticket originally received from him; and on the next journey down the second ticket was received again at Uraga and returned to the office at Yedo. The settlement of averages and of all other claims was made at the assembly-office after investigation by the guild officials.

A correspondent in the *Japan Mail* a number of years ago declared that the Japanese in the old days knew nothing of marine insurance. On the contrary, they had the best kind of insurance,—the mutual system. One of the chief features of the shipping guild and its combination of related *kumi* was the provision for the general sharing of loss among all the members of the association. When a ship is lost, it was said, if the owner alone bears the loss, his whole estate is gone and his family ruined. Hence, as such a disaster may in the course of time fall to the lot of any family, it is for the interest of each and all to unite and share the risks. Thus, though each year there will be for every one a small expense, yet no one will suffer irretrievable ruin. For 200 years a system of this sort prevailed among the ship-owners and freighters of Osaka and Yedo.

We may also rank among the modes of transportation the floating of timber from the interior to Yedo by river and sea. For Government timber there was a regular system for this purpose. The logs were measured and numbered when they reached the river nearest to the forest, and there they were launched singly. At intervals along the smaller streams were dams; these were closed until a sufficient head of water had accumulated, and then the opening of the dam let loose a volume of water large enough to carry the logs down to the next one. At the confluence of the main river another inspection took place, and then the logs were floated down to a similar station on the coast. A circular letter (*kai-jo*) was sent to all villages along

the river, directing them to assist in passing the timber along. At the mouth of the river the logs were made into rafts and taken around to Yedo.

We may now look at those other agencies for facilitating commercial intercourse,

9. *Money, Banks, and Commercial Paper.*

The chief difficulties that arise in studying the money of Old Japan are connected with the exchange values of different coinages; but as these differed constantly and cannot be completely understood until a chronological list of values has been compiled, it will be impossible here to do more than note the general approximate values.

First came the gold coinage, in which the *ryo* was the chief unit. This was worth, as coined in Tempo and Ansei (1835-1860), from 3½ to 4½ dollars Mexican. In the last century it was worth twice as much. The *ryo* was divided theoretically into 4 *bu*, and the *bu* into 4 *shu*; but the actual worth of these divisions did not always correspond to this. In the Tempo period and later, for instance, the *bu* was worth less than a quarter of a *ryo*. The silver coinage was of two standards. First, the lower gold-units were used; that is, *bu* and *shu* were coined in silver as well as in gold. Here again there was not an exact correspondence, even between the relative values of the two silver coins. For instance, the 2-*shu* piece of 1824-30 was only a little less valuable than the 1 *bu* piece of 1837-54. Second, the *ryo* was divided into a number

of *momme* (originally a weight-measure), and silver payments were usually calculated in *momme*. The only coin, however, actually issued in that denomination seems to have been a 5-*momme* piece in 1765-72. The number of *momme* to a *ryo* was at first 50, but after 1765 (about) it was made 60. Thus 15 *momme* ought to equal 1 *bu*, and 3¾ *momme*, 1 *shu*. Yet in one passage in Part III the above 2-*shu* piece is said to be a little more than 12 *momme*. The copper coinage was subject to changes even more frequent; but except for the money-changers the effect of these was seldom important, because of the comparatively small value of each coin. The general term for the small money of iron or copper was *zeni*. The *ryo* was divided into several thousand *mon* of *zeni*. Yet it is hardly correct to say that it was "divided;" the two coinages seem to have grown up independently, and from time to time a rate of equivalence was determined on. The *kwan* or string of 1,000 *mon* had its origin far back in the beginning of feudalism, when each land-owner was bound to send a quota of armed men in proportion to the size of his possessions; the unit *kwan* grew out of these military services. Japanese annalists still contradict each other as to the true origin of the standard; but at any rate it was very widely used, and in the rural districts, in the Tokugawa times, where a gold coin was the mark of a rich man, the *kwan* or *kwammon* was the chief standard of reckoning. The rate of equivalence for the *ryo* was for a long time nominally 4,000 *mon*; this was the figure at which the Tokugawa Government constantly ordered it to be taken. But there were various issues from time to time, and according as one or another coin predominated the actual value fluctuated. In one passage we find 1 *momme* declared to be equal to 100 *mon*, which would give 6,000 *mon* as the equivalent of 1 *ryo*. A special rate was sanctioned for coin known as *yeiraku sen*, or, briefly, the *yei*,—the origin of which again is the subject of much con-

tradiction. It probably came from China; and it was much preferred to the ordinary *mon*, which was known as *aku-sen* or *bita-sen* (bad money). The ratio of this and the *yei-sen* was fixed at 1 to 4, and thus 1,000 *mon* of *yei* were equal to 1 *ryo*. In certain districts this was the ordinary standard used. Thus we have the normal scale:

1 *ryo* = 60 *momme* = 1,000 *yei-mon* = 4,000 *mon*;
1 *bu* = 15 " = 250 " " = 1,000 " .

In addition to these terms, there was a decimal series of *bu*, *rin*, and *mo*[1] (10ths, 100ths, 1000ths), which could be applied to any unit, and was ordinarily used with the *momme* (silver) and the *mon* (*zeni*).

As a practical exercise in the use of these terms, let us take an extract from the tax-account of a village in Kai *kuni*. Each family's taxes are separately reckoned, with the various additions, rebates, and payments. The following is the account of a farmer named Tobei:

"Assessed production: 16 *koku*, 8 *to*, 3 *sho*, 2 *go*, 4 *shaku*.[2]
Tax-rice: 5 " , 3 ", 9 " , 3 ", 0 " .
Extra-rice:[3] 2 ", 4 " , 3 ", 6 " .

Items:	*Yei Money.*
a) Extra-rice	175 *mon*, 9 *bu*.
b) Short-rate,[4] 1 *koku*, 7 *to*, 9 *sho*, 8 *go*.....	434 ", 3 ",
c) Long-rate,[5] 1 *koku*, 1 *to*, 9 *sho*, 8 *go*, 3 *shaku*.....	1 *kwan*, 198 ", 3 ", 3 *rin*.

1. In Japanese the stigma of worthlessness is "not worth a *mo*." 2. These measures are from a decimal series. 3. *Kuchi-mai*; the extra-rice added to compensate for leakage. Here it was reckoned in money. 4. *Sho-giri*. 5. *Dai-giri*. In this section of the country a portion only of the tax was paid in money, the process of calculation being an intricate one. The books say that one-third should be in the long-rate and one-third in the short-rate; but here the rice paid in money is about five-ninths of the whole, and this is again divided between the two methods in the proportion of three-fifths and two-fifths.

Remainder, 2 *koku*, 4 *to*, 8 *sho*, 3 *go*. Of this 7 bales[1] are paid in all, with 7 *sho* of extra-rice;[2] remainder due, 3 *sho*, 3 *go*, worth in silver, 1 *momme*, 2 *bu*, 1 *rin*.	
d) Advances[3]	3 " , 9 " , 3 ".
e) Cost of seed	4 " , 4 " , 3 ".
f) Expense due for breakwater	539 " , 3 ".
Total	2 *kwan*, 356 *mon*, 1 *bu*, 9 *rin*.
Of this amount has been paid:	
Gold,	2 *bu*:
"	1 *ryo*, 3 *bu*:[4]
Remainder, in *yei* money,	106 *mon*, 1 *bu*, 9 *rin*:
Equivalent, in silver, to	4 *momme*, 4 *bu*, 8 *rin*.
Also due:	
g) For labor on public works,	56 " , 2 " , 5 ".
h) For advances in the Dog year: Rice, 6 *sho*, 2 *go*; worth	2 " , 6 ".
Total,[5] in silver,	64 " , 5 " , 8 ".
Of this, a deduction for wages paid to public laborers	3 " , 5 " , 5 ".
Total due	61 " , 0 " , 3 ".

all of which has been paid."

1. *Hyo*; a bale was 3 *to*, 5 *sho*; thus, if 7 bales were paid, there were 3 *sho*, 3 *go* left over, to be carried into the silver account. 2. *Kake-mai*; an obscure term, but probably analogous to *kuchi-mai*, *supra*. 3. *Bu-jiki*; made by the Government the year before and now to be repaid. 4. This total of 2 *ryo*, 1 *bu*, made 2,250 *mon* of *yei* money, leaving the remainder stated. 5. To make this total the previous amount of 1 *momme*, 2 *bu*, 1 *rin*, due on the rice-remainder in *c*, must be added in. The total, however, foots up 4 *rin* only, instead of 8.

One learns from this that at the time of the above document (1803) 1 *momme* was worth about 24 *yei-mon*, and 40 *momme* would nearly buy 1,000 *mon* or 1 *ryo*. This tax-account will illustrate at once the fluctuations of the currency and the mode in which the people employed the different coinages.

There was also more or less paper money in circulation. Paper money appears to have been known previous to the Tokugawa epoch, but was not used in any considerable amounts. The Tokugawa Government itself never once, during its long regime, put into circulation a Government issue; it was only at the close of its power, in 1867 (Keiwo, III), that it sanctioned a paper money for the newlyopened port of Hyogo, and this was withdrawn almost as soon as it was authorized. Issues of paper money by private persons were of course made in the shape of bank-notes, and of these something will be said later; but they had a circulation mainly in the large centres of trade. Throughout the interior the chief paper-money was that put forth by the *daimyo*. The issue was kept strictly under the control of the Tokugawa legislators, and at one time they entirely forbade further issues. The issue of these "clan-notes" (*han-satsu*) began about the period Kambun (1661-73), and by Genroku (1688-1704) had grown to a large amount. In 1707 (Hoyei, IV) the Government prohibited the further issue of all such money, in terms which seem to include also even the subsequent circulation of what had been already put forth. In 1730 (Kyoho, XV) it was found necessary to repeal this prohibition, the object being to bolster up the price of rice. The permission applied to gold, silver and copper bills equally, and for the *daimyo* of 200,000 *koku* or more was to continue for 25 years, but for those of smaller estates for 15 years only. In 1755 (Horeki, V) the license was restricted to silver bills only. Subsequent legislation merely declared the policy of refusing to grant it to daimiates other than those already possessing the privilege.

These silver notes were of many denominations. In Echizen, for instance (where the earliest issue of "clan-notes" is said to have been made), the denominations were *momme* 100, 50, 10, 5, 3, 2, and 1. It would seem that none of the issues were in name irredeemable; though the actual value of the notes was more or less affected by the pecuniary circumstances of the fief. Some of the more opulent *daimyo* established at Osaka banks for the redemption (*hiki-kaye-jo*) of their issues, and in consequence their notes had a large circulation outside their own fiefs. Various artifices were resorted to for inducing the acceptance of the paper money. For instance, the fief of Bizen ordered that for 100 *momme* of silver coin 101 *momme* of notes would be given, while for 102 *momme* of notes there would be given only 100 *momme* of silver. It will easily be understood that, from the scarcity of coined money in Old Japan, the *daimyo* in many cases felt themselves forced to increase the circulating medium by issuing paper-money. In other cases the necessity arose to defend their own fiefs from the paper-money of adjacent fiefs by following the example of their neighbors and thus preventing a drain of their own coin. But there were many instances in which paper-money was resorted to merely as a means of escape from pecuniary embarrassments which both the taxes and the official money-lenders were powerless to relieve.

At the close of the Tokugawa regime there were 28 *daimyo* and 8 *hatamoto* whose issues of paper-money were extant. The total number of notes was nearly 411 million. The value in the new coinage of the Meiji era was 17½ millions of *yen*. For this entire amount the new Government assumed the liability, and the fief-notes were taken by it in exchange for the paper of the new era, which has since (though at the cost of much suffering) been placed on a complete equality with silver.

The term applied to this paper-money was generally *satsu* (note, piece) or *kitte* (ticket), these words being

used in combination with the coin represented,—*gin-satsu* (silver), *kin-satsu* (gold), *zeni-satsu* (copper and iron), *gin-kitte*, *zeni-kitte*, and so on. Less commonly the words *hagaki* (written slip), and *tegata* (bill) were applied to such documents. *Kitte* and *tegata* were also applied to certificates representing deposits (*azukari*) of merchandise or promises to pay in merchandise. The *kome-kitte* (rice-ticket) was the most important, and something will be said of it in connection with the rice-exchanges, under the head of the Rice Trade. These certificates represented (among other things) the hire of packhorses and carriers (*jimba-dachin azukari-tegata*), the deposit of manure (*koyashi azukari-tegata*), the hire (apparently) of umbrellas (*kasa-nihon tegata*), and so on. Where the *kitte* were issued by wholesalers in a particular trade, they were known as *kura* (warehouse)-*azukari-kitte*. The commonest of these was the sugar deposit-certificate (*sato azukari-kitte*). It recited that the price had been received and promised an equivalent amount of sugar, but, if the bill was not presented within a certain period, it was to be of no effect and void. This period was 3 years and 3 months, and, as no storage need be paid, the merchandise was sometimes not called for until the end of the time. Destruction of the merchandise by fire or flood was no excuse for non-delivery, and this naturally gave the certificates an element of stability.

We come now to the subject of commercial paper properly so called,—bills of exchange, bank notes, checks, and other instruments resting on the credit of individuals and convertible into money. But all these commercial expedients were intimately connected in their operation and history with the banking system; and of the banks, with their predecessors and associates, the money-changers, a few words must first be said.

With a currency as complicated and changeable as that of Old Japan the money-changers did a thriving

business. In Osaka they appear to have been organized into a guild about 1660, and were at that time already very numerous. There were in Yedo alone at the close of the last century 643 money-changers, associated in a guild of some 20 or more companies. These were what had been formerly known as "small-money-changers" (*zeni-ryo-gaye-ya*); that is, they made it their business to furnish small coin to any who had minor gold or silver coins to change. Each sat in a little shop behind the railing peculiar to the trade, his balance stamped on the bottom with the official brand, and his trade-sign in the shape of a weight. In the beginning the exchange-shops had all been situated either in Suruga ward, in the Kanda district, or in Chief Exchange ward,[1] in the Nihonbashi district. But in Japan, as in Venice, banking was at first associated with money-changing; and when smaller exchange shops started in different quarters of the city, the larger business of gold and silver exchange and of banking fell into the hands of the larger houses, of whom hereafter. Subsequently the banking business seems to have engrossed these "chief houses", and the former "small-money changers" took up also the business of gold and silver exchange. The thoroughfare known to-day as *Ginza* (silver-shops) was one of their chief districts. In 1787 there was a separation, and the money-changers proper (*ryo-gaye-ya*) were placed in a separate guild; while the bankers (though still known generally as *hon-ryo-gaye-ya*, chief exchange-houses) also formed a guild of their own.

The daily market-price was determined in two Exchanges (*soba*, market),—one for *zeni*, the other for gold and silver. The *zeni-soba* was at Old Yokkaichi ward (just below the Yeitai Bridge). The meeting was attended

1. *Hon-ryo-gaye-cho.*

by some 20 representatives of the companies of the small money-changers, and by representatives of the *hon-ryo-gaye-ya*, or bankers. It was apparently held in the open air near the highway, and was supposed to open at 8 o'clock in the evening. When the inspector (*metsuke*) stepped forth and placed his lantern in position, the bidding began; the amounts of the sales and the prices were entered by a director in a book, by the light of the lantern, and the ruling price was then reported to the two Town Magistrates' Offices and the town elders for publication the next morning.

The Exchange for gold and silver was in the Chief Exchange ward, and was daily attended by representatives of the bankers' houses and the ordinary money-changers. Here the buying and selling went on, and at the close of the day's session the director reported the ruling prices and the amounts bought and sold to the bankers, who in turn notified the Finance Magistracy, the Palace, and a few other important offices; a note being made in the same report of the *zeni* prices of the previous evening. One of the rules of this Exchange was that sales of less than 1,000 *ryo* could be in lots of 400 *ryo* or 800 *ryo* only; no intermediate amounts were sold.

We come now to the business of those houses which have been termed "bankers." Another common name for these houses (beside *hon-ryo-gaye-ya*, chief exchange-houses)—was *kawase-kumi*. *Kawase*, meaning literally "make exchange," conveyed in this connection the idea in our "bill of exchange",—that is, not the mere exchange of one coinage for another, but the transport of money from one place to another or a process equivalent to it. This epithet will indicate at once the origin of these houses and their chief business. There are various stories as to the first house to enter the business; but by all accounts it would seem that the first instances of sending Government money from Osaka to Yedo by bill occurred about the period

Genroku (1688-1704), and that the business was undertaken about the same time by a company of money-changers known as the Ten Men Company and by the Mitsui House already described. But there had been private transactions of exchange by bill at a much earlier period. When the guild of money-changers was established about 1660 in Osaka, the various sorts of commercial paper were already well known, and 10 of the chief houses were authorized to issue what presumably were equivalent to bank-notes. But before the Tokugawa period there had been a species of bill of exchange known as *kaye-sen* (return or exchange of money), as abundant records testify; and there is even an enactment of the early part of the Kamakura dynasty (1297; Yeinin, V) forbidding interest to be allowed on sums due on bills of exchange. These, however, are records brought to light by antiquarians, and the thread of succession was perhaps broken by the wars of the 16th century, for in the Osaka traditions the name associated with the foundation of the banking business and the development of the system of negotiable instruments is that of Tennojiya Gohei, the head of a famous exchange-house of (probably) the early 17th century.

Moreover, even before the Government enterprise of Genroku (1688-1703), it seems that private moneys were being transferred by bills between Osaka and Yedo as early as Genna (1615-1624). It is easy to see how the money-changers had discovered the expedient. The Mitsui house accomplished the transaction by buying cloth through its branch in Kyoto, sending it to Yedo, and selling it through its branch in that city. As the sea-transport, then coming in favor, was much cheaper than the old mode of pack-horses and couriers, the Mitsui House could easily serve the Government cheaply and yet make a profit. The period required by the Mitsui house seems to have been 150 days, and by the money-changers, 60 or 90 days. Merchants so trusted by the Government were known as *ka-*

wase-kata-yotashi (suppliers of exchange), and were required to deposit money, title-deeds, or other good security with the Government. As commerce increased, the same methods came into general use among all classes of merchants, and the whole trade between Osaka and Yedo was settled by bills of exchange. Some of the features of the bill system will now be noted.[1]

The "chief exchange-houses," or banks, were in Yedo (some 25 years ago) 145 in number. Among these there was a combination of the richest, known as the Ten Men Exchange-Company, the successors of the Ten Men Company above mentioned; the real number of houses in it, however, was 13. These with a few others, were known as the "parent-houses"; for each one was the headquarters of the transactions of a number of the smaller bankers. The latter drew drafts on their respective parent-houses, and in other ways made use of them just as country banks in the United States use special metropolitan banks. The commercial paper was chiefly bills of exchange, checks, and bank notes. Ordinary promissory notes were used, but apparently not as freely as other forms. The check system was in its elements much like our own Western one. Where two merchants, A and B, both dealt with the same bank X, and A owed B, A drew a check on X, and paid it to B. Where A's bank was X and B's was Y, A drew on X, as before, and paid it to B; B deposited it with Y, and Y settled with X in the course of business,—that is, if X and Y had mutual arrangements to honor each other's checks, as all the Yedo bankers had. But if X and Y did not have mutual accounts, it seems

1. The following statements are founded chiefly on a report made about 1881 to the Finance Department at the instance of Mr. Kaneko, when the draft of a law upon Commercial Paper was under consideration; and in part also upon the report of the Department of Agriculture and Commerce, "*Shogyo Kwanrei*," already mentioned on p. 126.

that X would send the check to have it accepted by Y, and, on receiving it again, would forward it to Z, his own banker, and Z would probably have a mutual account with Y. The form of the check was as follows:

"*Memorandum.*

Silver,————*kwamme*[1]
to be paid to Mr.————
————year,————month,————day
————House.
To Mr.————
of the ————House."

This instrument was known as *furi* (draw)-*dashi* (send)-*tegata*. The last transaction above would usually occur where the banks Y and X were minor ones and the bank Z was a "parent-house." Thus, when bank X received from a merchant a check on bank Y in the same town, he would take the check there for acceptance (and, in accepting, Y would renew the "address," as it was called, to Z, much in the way that we indorse), and then send it to the "parent-house" Z; or, making quicker work, X might send directly to Z, its "parent-house," though Y had no dealings with it, and Z would see to the further settlement. Where a bank X received a check on bank Y and had no mutual accounts with it, X might, if Y was in the same town, send the check over directly and have it cashed. Y would do this, if the check was correct on its face, without examining the state of its depositor's account. But in case of an unauthorized over-draft (which, it is said, happened rarely, as the standard of commercial honor was high), or of any other defect in the draft, Y might return the bill to X before 12 o'clock noon of the same day, and X was bound to return the money. At 12 o'clock the business of the bankers closed (ordinary money-changers were open till 4), and it is said

1. A measure of weight.

that once a day only were bills exchanged,—which probably refers to a transaction similar to that performed at our clearing-houses.[1] A bank offered a doubtful check or bill might protect itself from harm by obtaining the certification (*hiki-awase*, guaranty) of the drawee bank. A book (called the "guaranty-book," *hiki-awase-cho*) was taken, with the check, to the drawee bank, and the latter signed in the book. The draft was then said to be "guaranteed," and the signer was responsible for its payment. If the signature was refused, the draft was returned to the person offering it. The form of guaranty was as follows:

"*Memorandum.*

Silver,————*kwamme*

drawn by [2] ————,

We guarantee the above,

——month,——day,

————House."[3]

Payment by check seems to have been regarded as absolute, not conditional, so far as the solvency of the bank was concerned, and the holder bore the loss in case of the bank's failure. But where the bank dishonored the check for lack of funds or a like reason, the holder had recourse against his transferor. It would seem also that where the holder neglected for an unreasonable time to present the check, the drawer was not responsible for subsequent lack of funds.

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1. This process of balancing up the accounts was managed by the houses drawing on each other every day a peculiar check known as *furi-sashigami* (draw-order), which appears to have answered the purpose of our clearing-house checks. 2. *In-moto* (signer). 3. This appears to correspond to our Western process of certifying checks. It may perhaps have included the general process of an acceptance of a bill; but this is doubtful.

A peculiar form of check was known as *o-tegata*, and was employed only to facilitate the settlement of accounts at the half-yearly settling times (7th and 12th months). Where A owed B but at the end of the season could not pay cash, though various moneys were due him from X and others, he drew a provisional check on his bank and paid it over to B. This check was payable on the 2nd of the next month. By the 31st or the 1st A would have collected all that was due him, and by the 2nd he must have paid it in to his bank. Meanwhile B placed the check with his own bank, and on the 3rd the two (or more) banks met and wrote off the balances. If A had not provided funds, his check was thrown out and returned to B who must then recover from A in the best way he could.

Of course where a bill was transmitted, in the course of negotiation, by one house to another, each transferor must indorse it. The indorsement consisted in an abbreviation (*ko-in*, short name) of the house-name, similar to our initials,[1] and was absolutely essential to the negotiability of the instrument. Unless a proper chain of indorsements appeared, the drawee would not pay.

It does not appear that blank indorsements were used, or that ordinary promissory notes to bearer were in vogue. But there was an instrument which was equivalent to our regular bank-note, payable to bearer. This was the *azukari-tegata* (deposit-note). Where a man had no bank deposit and received a bill on some bank, he went there and presented it, and got in exchange a document or documents in the following form:

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1. It should be added that the drafts of the "parent-houses" on each other (*furi-sashigami*) were drawn by certain chief clerks known as the "bill-signers" (*tegata-namaye-nin*), who used merely the short-name of the house and added their own to it; thus "Ichisuke, of M."; "To Nisuke, of Ten."

"*Memorandum.*

Silver, [or gold]————*kwamme* [or *ryo*].

We promise to pay the above amount in silver [or gold] in exchange for this document.

—year,—month,—day,

————House."

This "deposit-note" was passed along from hand to hand, apparently without indorsement, and the risk of the bank's insolvency fell entirely on the holder of the note. These notes were very popular, and are said to have circulated as freely as coin. They were found even in the interior districts (issuing, of course, from a Yedo or Osaka bank), and the traveler on the Tokaido stuffed his wallet with them as we do with our modern bank-notes. The question of over-issue seems to have been left entirely in the hands of the guild, and the members would not allow any house to continue business after it had proved itself incapable of redeeming its notes. It is difficult to learn what the exact machinery was by which the issue was regulated; but the amount seems to have been fixed by mutual agreement. Where a run on the bank made it necessary to furnish a large supply of coin, the allied houses were appealed to, and finally even the "parent-house" might have to lend assistance. Whatever the regulations were as to over-issue, it is certain that the amount of so-called *ku-ken* (empty bills), or notes not issued against cash, was large. Early in the Meiji period there were large failures among the banks, owing to a lack of coin which came about through changes in the currency, and the holders of these notes were unable to obtain payment. It is said only those banks that had made little or no over-issue were able to survive; though one bank is noted as remaining whose issue had been at the rate of 6 *ryo* of notes to 1 *ryo* of cash.

The deposits of customers were, of course, the basis of the banks' transactions. The depositor took with him the bill or the cash to be deposited, and the amount of the deposit (*nyu-kin*, money put in) was entered in his pass-book (*kayoi-cho*). If the pass-book was not brought, a temporary receipt of the following form was given him:

"*Memorandum.*

Silver,————*kwamme.*

Received the above amount, this receipt to be void when entry is made in the pass-book.

————House.

To Mr.————

of————House."

The deposits, however, were never placed to the customers' credit until the next day after their receipt. The banks paid no interest on these deposits on current account, and they charged interest on over-drafts.

Ordinary promissory notes, as has been said, seem not to have been as much in use as the other forms of commercial paper. They were employed, however, and it is a curious coincidence that the term applied to them was one which is rendered exactly by "promissory note,"—*yakusoku-tegata*. This instrument was used, as we use it, to evidence a debt and at the same time postpone its payment until a certain date. In Osaka the note usually promised payment at the end of the current month; and there were two kinds,—one in form a promise by the debtor, like our own instrument, the other in form an order upon the bank to pay at the time named. These *yakusoku-tegata* appear to have passed from hand to hand like other commercial paper. In some of the centres of production in the interior they were the ordinary instruments of credit. Thus the silk-brokers in Ashikaga (in the present Tochigi *ken*) would make out promissory notes and give them in payment to the

cloth-seller. The latter passed them on to the spinners and dyers, and thus the whole process of production, manufacture, and distribution rested firmly on a basis of commercial paper. In recent times these notes have been made payable at 5, 6, 20, or 30 days, and have included interest for that period, but in former days they appear to have been payable on demand. They were known as "silk-purchase notes" (*kinu-kai-fuda*), and were made of a special sort of paper peculiar to the region, folded eight times, inscribed in large characters, and bearing the full name of the maker and the short-name of the payee.

One of the notable conditions having great a influence on the conduct of trade was the equilibrium which the facts of national life brought about between the mutual indebtedness of Osaka and Yedo, the chief centres of commerce. On the one hand, as has been explained, Osaka was the great stronghold of the wholesalers dealing directly with the producers, and Yedo annually came into debt to an enormous sum for the supplies of all sorts sent down from Osaka for distribution. On the other hand, the great *daimyo* of the Centre, West, South-West, and Northwest sent all their tax-rice for sale to Osaka, the centre of the rice-market as of almost every other; but these same *daimyo* every other year took up their residence (as required by law) in Yedo, with a multitude of attendants, and even during their absence there were, for many of them, three vast mansions and a large retinue to be kept up in Yedo; so that the sums due to them for the millions of *koku* of rice which they had sold in Osaka were in large part to be paid to them in Yedo. Thus, with the Yedo merchants owing Osaka, and with Osaka owing the Yedo *daimyo*, the accounts could be settled almost completely by bills of exchange. When an Osaka merchant drew on his Yedo debtor, he got his bill discounted for cash, as we should do; such a bill was known as *shita-kawase* (immediate-payment), or *uki* (float lightly, change

quickly)-*kawase*. The days ending in 2, 5, and 8 were set apart[1] in the Exchange for the sale of what might be called "foreign bills," that is, drawn by either Osaka or Yedo on the other. Gold to be sent from Osaka to Yedo was called "down gold." The form of this bill given by a bank was as follows:

"Bill for cash received.

Gold,————*ryo* received.

We have received the above amount of down gold; you will pay the equivalent amount at Yedo to Mr.————, on——month,——day, without fail. In witness whereof we have given this bill of exchange.

————House.

——year,——month,——day.

To————House."

The employment of a system of commercial paper so varied and so extensive as that which has been described, indicates the extent to which credit entered into the commercial operations of the times, and the degree of mercantile confidence that must have prevailed. Probably one of the reasons for the solidity of the mercantile credit system was the special protection given by law to commercial paper. A claim founded on such an instrument was given a "summary action" (*chu-batsu-saiban*);[2] in two respects this action possessed special advantages,—it was tried at an early date, without waiting for the regular Court-days, and the judgment gave the creditor a right of priority (*saki-dori-toku-ken*) in the distribution of the debtor's estate. Moreover, the procedure for the enforcement of judgment was somewhat stricter and more summary.

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1. A very common method in Japan of fixing regular periods; thus, the above days in each month would be 2, 5, 8, 12, 15, 18, 22, 25, 28. 2. Or *naka-nuki*; picked out of the middle (of the list of cases), i.e. summary.

We may now, in the light of the foregoing explanations, look briefly at the processes involved in that chief of all mercantile activities in Old Japan, the

10. *Rice Trade.*[1]

If we begin at the beginning, taking the rice when it reached the local storehouses, and following it to the retail shops, we may distinguish three stages in the distribution, each having its peculiar methods and customs;—the transport of the rice to the metropolis, its apportionment (if tax-rice) among the retainers, and its purchase and sale by brokers and wholesalers.

The bulk of the export rice was tax-rice. Where private rice was shipped, the vessels were generally owned by rich rice-merchants. The merchant usually loaded the vessel to four-fifths of its capacity, and left the remainder for miscellaneous cargo procured by the captain. The freight charges on the latter constituted the remuneration for the captain, out of which the crew were paid. The captain shared the risk with the owner to the extent of his interest in the freight. The tax-rice in the Shogunate dominions was usually transported by contractors (*ukeoinin*), who bid (*raku-satsu*) for the transportation of rice from an entire province. The contractor deposited security money (some 60 *ryo* for every 10,000 *koku*), and hired private vessels (which might be owned by a merchant or by the captain), subject to the Government's regulations.

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1. The customs differed in different regions. Attention will here be given chiefly to those prevailing in the Shogunate dominions.

When the tax-rice in a certain quarter was almost ready for delivery, notice was given by the proper official to the freighting-contractor, who made a tender specifying the vessel, owner (whether captain or another), captain (*oki-sendo* or *sendo*), capacity, year of building, equipment, and number of crew. If this tender was satisfactory, it was accepted. If for some reason no vessel could be got in this way, search was made in other quarters, and sometimes the *daikwan* of the region where the rice was made the selection. After selection the official "black-brand" was nailed to the ship,—a small square block with an official brand. The place of loading was then assigned, or perhaps the vessel sailed to a given port to receive orders from an official as to her destination.

Meanwhile the rice was being prepared for transportation under the *daikwan's* supervision. The farmers themselves packed the rice, each bale furnished with an inside and outside tag bearing the payor's name and address, and placed them in the village storehouse. When all was collected the farmers transported it again to the central official warehouse, where official inspection was made. From there to the shipping port the risk was the Government's, while the farmers, as a labor service, effected the transportation; but if the distance exceeded 5 *ri* they received payment. This operation of getting the rice from the field to the port furnished fully one-half of the causes for petition and complaint by the people to the *daikwan*, and was a subject of inexhaustible interest and endless adjustment in the life of the rural community.

The ship was not allowed to take on any other freight than the tax-rice and the provisions; and it was even required that, if a gale arose and some of the cargo had to be jettisoned, the provision-rice should go first. The object was to prevent fraud by the pretended sacrifice of the tax-rice to other goods. A bill of lading (*okuri-jo*)

was given by the officer in charge of the loading, and ran as follows:

"Bill of Lading for Official Tax-Rice to be sent to Yedo.

—— *kuni*, —— port, —— ship,
Captain, ———.
—— *kuni*, —— *kori*, —— port,
Supercargo,[1] farmer ———.

1. Tax-rice in bags marked —— year:
   Total No. of bags: —— thousand, —— hundred,
   containing —— *koku* (or —— *to*).
   Freight-charges:[2] —— gold.
   Paid at —— port, —— gold (one-third).
   To be paid at Yedo, —— " (two-thirds).

Also:

2. Provision-rice,[3] ..... —— bags (containing—*to*).
3. Ship made of —— timber, —— years ago.
4. Mast, [pine]; yards, [cypress]; rudder, [white oak]; area of sail, —— *tan*[4] of cotton.
5. Iron anchors, —; weighing respectively —— *kwamme*, etc.
6. Small boat, —;
   besides other appliances.
7. Draught, —— inches.[5]
8. One copy of the Rules of Kwambun XIII.
9. One ship's log.[6]
10. One copy of Rules for coasting-villages.
11. One red-ball flag.[7]

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1. *Uwa* (above)-*nori* (riding, going). 2. *Un-chin*. 3. *Ryo-mai*. 4. About 28 feet in length. 5. This was apparently measured from the gunwale, after loading, so as to detect any fraudulent removal of cargo. 6. *Sen-chu nikki*. 7. *Hi-no-maru*; indicating the official nature of the voyage.

The above ship, carrying the tax-rice of last-year paid by —— *kori*, —— *kuni*, and starting from —— port, —— *kuni*, was examined at departure and the draught noted. The above details are correct. On receipt of this, please pay the remainder of the freight charges. In testimony of the above, this bill is given.

—— year, —— month, —— day.
To
——— sub-manager,
under —— officer,
at destination.
from
——, sub-manager under ——,
at the Shipping-Office of
—— port,
—— *kuni*."

With the ship went a supercargo, usually one of the headmen of the tax-paying district,[1] who had a general supervision of the cargo, and was bound to see it safely into the storehouse at Yedo and bring back a receipt. He kept a log of his own (*te-cho*), in which he was to record all unusual happenings. The captain also kept a log, in which were noted injuries to cargo, jettisons, and other casualties, as well as the occasions, if any, when the vessel was required to put in anywhere through stress of weather. In the cabin were posted the regulations on these points, all being directed towards a safe landing of the rice undiminished in quantity or quality. As was customary in Japan, all those concerned signed documents of submission (*ukesho*, acceptance) engaging faithfully to follow these regulations; one was signed by the captain, the mate (*kako-gashira*, chief of sailors), and the cook (*makanai*); the other by the supercargo. As

1. Sometimes called *osame-nanushi* (payment headman), as he had charge of paying the rice to the authorities at Yedo.

soon as the ship left for Yedo, notice was sent to the Finance Department in Yedo; and on the vessel's arrival the rice was unloaded and stored in the Government storehouses at Asakusa, Honjo, or Takebashi. Various regulations were made for the payment by the ship of damage caused by water, rats, etc. The freight was paid, as the bill of lading shows, one-third at the port of lading, and two-thirds on delivery at Yedo. If the vessel was wrecked on the way from Yedo to the port of lading, one-sixth was paid. If the loss occurred after loading, the one-third was retained by the freighter. If the Osaka market was more favorable and the ship was ordered, while at the port of lading, to change and proceed to Osaka, the second third was paid at Osaka and the last at Yedo. Where jettison occurred, no freight was paid on the amount thrown over.

With the rice safe in the storehouse, and the supercargo on his way home with a receipt to show to his fellow-provincials, let us see what became of the rice subsequently.

The main Government storehouses were in the districts of Asakusa and Honjo, and consisted of a hundred or more separate buildings. The chief offices were at Asakusa, where the distribution to the retainers took place. Most of the large *daimyo* had storehouses of their own, where they paid their retainers, but the central point was the *o-kura* or Government Store-house. In paying the retainers four sets of officials were involved. First there was the Certificate Bureau (*shomon-gakari*) in the office of the Council of State, which kept a tally of the various higher retainers. Next there was the Finance Department, the General Bureau, which must keep account of all outgoes, and therefore must note the payment. Then came the Registrars (*kakigaye-bugyo*), who were immediately entrusted with the duty of certifying to the persons entitled and the amounts due; and, last, the Storehouse-keepers, who paid out the salary-rice on the certificate of the Regis-

trars. Of the latter there were two, one appointed from the Finance Department, the other from the Shogun's Castle Guard. They did monthly service alternately at their offices in Asakusa near the store-houses, and received 200 *hyo* salary. Their clerks (*tedai*) received 30 *hyo* and "two-men's rations,"[1] and were appointed by the Finance Magistrate. The Storehouse-keepers (*okura-bugyo*) were seven, and had the same salary as the Registrars. They came some under the Finance Department, some under the Castle-Guard. Two stayed at the Asakusa storehouse, and five at the Honjo storehouses. They had under them various clerks and guards.[3] The process to be observed when the salary was drawn was as follows. If the retainer was occupying an office under the direct control (*jiki-shihai*[4]) of either the Council of State or the Junior Council, he made his application (*gwan-sho*) to the Certificate Bureau above-mentioned, stating his name, office, and amount of stipend. The clerks examined the records, got the counterseal of the Council of State, and sent to the chief of the department to which the applicant belonged (*kashira-shihai*) a document addressed to the Registrar, directing him to pay the instalment due for such and such an amount. This document was then given by the chief of the department to the applicant, who sent it to the Registrar. The latter signed it and forwarded it to the Finance Magistrate, who indorsed it as satisfactory and returned it to the Registrar. The latter indorsed an order

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1. This was an extra payment often added to make an office more honorable. "One man's rations" (*ichi-nin-fuchi*) were 2½ *hyo* or bales. 3. *Okura-ban, tedai, kumigashira, te-koage, koage-tsuyetsuki, koage-kashira.* 4. This meant, as already explained, that the officer was appointed by either of those Councils. Thus, A might be appointed by the Council of State; his assistant would be appointed by the Junior Council, and B's subordinate C by A. Here for B the Junior Council is *jiki-shihai* and A is *kashira-shihai*; for C, A is *jiki-shihai* and B is *kashira-shihai.*

addressed to the Storehouse Keeper directing him to pay the within amount; and the Keeper, going solely by the Registrar's indorsement, would deliver accordingly. Usually the retainer, if a person of consequence, did not himself go to draw the rice but either sent a broker (*fuda-sashi*) instead or sold the rice to the broker and allowed him to take it out. In this case another document was necessary. The retainer drew up a receipt in this form:

"Receipt for Spring Stipend-Rice.

Total stipend.....200 *hyo*.

Amount now due ..... 50 ".

at 8 *to* 5 *sho* for the *hyo*.

This is to certify that the above spring stipend-rice has been received.

———— year, ———— month.

————————

of————Office.

To the Registrars."

The chief of department indorsed this and the broker then took it to the Registrar; the latter compared it with the document already mentioned, and made his indorsement as before, which enabled the broker to get the rice from the Storehouse-Keeper. The original application to the Certificate Bureau, it should be said, was made by the chief of department himself if since the last payment there had been a change in the applicant's office, that is, if a son had succeeded a father who had retired or died, or if the previous incumbent had been dismissed or removed to another department.

The certificates (*tegata*) given in the above manner were known as *jiki-han* (direct sealed, or self-sealed). Whether the *jiki* refers to the seal of the Council or to that of the applicant is not clear. But the term was used in contradistinction from *ura-han tegata*, or certificates sealed by the chief of department with his *urahan*

or inferior seal. The latter method was used for the lower officials. The chief of their bureau handed in an application stating the total number of persons (without names) in each section (*kumi*), and asked for the salary at so much per man. The certificate given was called "string-certificate," *o-nawa* (string)-*isshi* (one sheet)-*tegata*, because all were asked for on one list.

The stipends were paid three times in the year. The first payment was in the 2nd month, the second in the 5th month, and the last in the 10th month. The first two were known as *on-shaku-mai* or *on-kari-mai* (official loaned-rice)—probably because these were originally regarded as advances on account—and were further distinguished by the terms "spring" and "summer." The last was known as *on-kiri-mai* (official final-rice), because it ended the year's payments. Where the stipend was expressed in *koku* (as in the higher offices) or *hyo* (the offices of middle grade), the proportions were one-fourth in spring and in summer and one half in winter. Where it was measured in *ryo* (as with many of the lower offices), it was divided into three equal instalments.[1] If a man was newly appointed to office before the end of the 9th month, he received the whole year's salary; if after that time, one-half only,—provided the salary was measured in rice. If in money, an appointment before the end of the 4th month gave the year's salary, before the end of the 9th month, two-thirds; after that time, one-third. The rice was divided into four grades, the best being paid out to the higher officers, and the poorest to the laborers on the public works and the dancers (*sarugaku*) supported at the public expense. Even where the salary was measured in rice, a portion might be paid in money, according to the state of the markets or other considerations. The Registrar drew up

1. *On-fuchi-mai* was a common t
for the latter.

a schedule of the amounts due and submitted it to the Finance Department, and the latter to the Council of State. And when the proportions of money and rice and the rate of exchange had been fixed, a proclamation *hatsugwan*, was posted by the Palace Attendants at the entrance of the Castle. It read something like this:

> "The spring payments shall be made at the rate of one-third rice and two-thirds money. The value of rice shall be reckoned at 40 *ryo* gold per 100 *koku*."[1]

But this proportion varied, as the following record of a single year's account will show:

Spring instalment:[2]

Rice, 50,934 *koku*, 0 *to*, 7 *sho*, 5 *go*, 7 *shaku*, 5 *sai*.
Money, 10,880 *ryo*, 3 *bu*.

Summer instalment:

Rice, 76,353 *koku*, 7 *to*, 4 *sho*, 4 *go*, 2 *shaku*, 2 *sai*.
Money, 84,653 *ryo*, 3 *bu*.

Winter final payment:[3]

Rice, 101,401 *koku*, 5 *to*, 5 *sho*, 7 *go*, 6 *shaku*.
Money, 229,783 *ryo*, 1 *bu*.

When the salary-application of a retainer had been approved, he usually sent a broker, as has been said, to take delivery for him. The proclamation above mentioned had announced the days on which delivery would be made. The stipends were divided into several grades, according to the rank of the office and the amount of the stipend, and for each grade was appointed from two to five days for delivering. Then on small tickets (*ko-gitte*) the Storehouse-keepers wrote the names of those within each grade (one on each

1. It is said that up to Kyoho (1716-1735) this official value was greater than the market value of rice; but after that it steadily declined until it even reached 60 % of the market value. 2. *On-shaku-mai*. 3. *On-kiri-mai*.

ticket), with the amounts due; and just before the period allotted to that grade the tickets were folded, and placed in a basket, which was so shaken that a suitable proportion for one day fell out.[1] The brokers, who attended this process, picked up and examined the tickets,[2] and those whose employers were included in this first day's appointment sent word to them in something like this form:

"I beg to inform you that, if to-morrow's weather is good, your rice will be delivered.

———month,———day.

———————

of the————House.

To

——————Esq., Official."

On the day appointed the broker took delivery. He might then send the rice by cart or canal-boat to the *samurai*, but the usual course was to sell it for the stipendiary. On a later day the latter (if he was of high rank) sent a retainer to the broker for the account; the broker's chief clerk (*banto*), however, might instead take it to the *samurai*. The account would read as follows:

"Account rendered for spring instalment received:

Rice received.....50 *hyo*,
which, at 3 *to*, 5 *sho* per *hyo*,
equals 17 *koku*, 5 *to*, or, in money,[3]
.....20 *ryo* gold, 7 *momme* silver.

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1. The days of delivery were known as *tama-wo-furu-bi* (days for which the tickets were shaken). 2. The name given to this broker, *fuda* (ticket)-*sashi* (touch, pick), seems to have come from this picking up of the rice-tickets. The stipendiary was called *fuda-danna* (master of the ticket). 3. This account shows the mode employed where no part of the stipend was paid in money.

Deduct:

For capital and interest of advances,
.....8 *ryo* gold, 5 *momme*, 8 *bu* silver.
For commission[1] at 2 *bu* per 100 *hyo*,
.....15 *momme*[2] silver.

Balance[3] .....16 *ryo*, 2 *bu* gold, 2 *momme* silver;
the silver equals 216 *mon* in small money.[4]

The above is the account for the spring instalment received by me. If there is any error, please notify me before the posting of the proclamation fixing the official price for the summer instalment, and I will send you a corrected account.

——year,———month.

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o f ———— House.

To

———— Esq., Official."[5]

The *fudasashi* no doubt had their origin in the dislike of the upper *samurai* to lower their dignity so far as to go personally and take delivery of their stipend-rice. In the older days, it is related, the simplicity of habits was such that no one thought it beneath his dignity to go to the

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1. *Fudasashi* (ticket-getting)-*ryo* (compensation). 2. 1 *bu*= ¼ *ryo*=15 *momme*. 3. *Sashihiki-daka*. 4. The rate ruling at the time of this original was thus 6,480 *mon* to the *ryo;* for a *ryo* contained 60 *momme*, and 1 *momme* is here made equivalent to 108 *mon*. 5. There is some difference of opinion as to the rates charged by the *fuda-sashi*. One authority states that there were two charges, the *fuda-sashi-ryo* or fee for getting delivery of the rice, and the *uri-kawa* or commission on its sale, the former being reckoned at 1 *bu* per 100 *hyo* of the stipend, and the latter at 2 *bu* per 100 *hyo* sold. As both operations were not necessarily undertaken by the *fuda-sashi*, it is probable that this distinction prevailed in the beginning and might be made at any time. But it seems likely that the term *fuda-sashi-ryo* would be loosely applied to both charges, and that, where both operations were given into the hands of the same person, there would be some abatement of the rate. This would explain the rate in the illustration above.

storehouse and sit about in the tea-houses waiting for his turn; even the greatest vassals sent some chief retainer. But gradually more luxurious ways came about. Those whose mansions were in distant wards deputed the receiving of the rice to the masters of these tea-houses where they had been accustomed to wait and make out their receipts. Then the well-to-do *restaurateurs* began to lend money to their patrons on the rice due them, and finally were trusted with the whole business of receiving and selling rice. In some cases the ordinary creditor who had loaned to the vassal was allowed to go and take delivery of the rice and pay himself from the proceeds. In these ways the *fudasashi* houses came into existence, and acted regularly as the go-betweens and the capitalists of the vassals. Their familiarity with the details of the delivery, and their position as creditors, made them the masters of the situation, and put the nobles, always running ahead of their income and always in need of money, entirely in their power. There were constant attempts by the Government to relieve the *samurai*; for instance, at one time a law was passed allowing them to repay their arrears without interest in instalments covering 20 years. The number of *fudasashi* varied from 96 to 109 at different periods. Their guild seems to have been formed in 1724, when the celebrated Oka was Town Magistrate of Yedo. It was divided into 3 *kumi*,—those of Tenno ward, of Upper ward, and of Morita ward; and each *kumi* was divided into 6 *ban* (watches), of nearly 6 houses each. There were monthly directors (*tsuki gyoji*), alternating in their office, with sundry lower officers. The shares were assignable as in other guilds. By the custom of the guild no member could accept the business of a *samurai* who had broken his connection with another member unless the consent of the latter was obtained, and all arrears due him from the *samurai* were repaid.[1]

1. The term *fuda-sashi*, it should be added, is sometimes used interchangeably with *kura-yado* or *kura-maye-yado* (hosts or houses

But the *fudasashi* were only on the outskirts of the rice-trade proper. They seem to have been peculiar to Yedo and a few smaller towns where numbers of *samurai* were constantly to be found in attendance on their lords. The rice delivered from the Tokugawa storehouses in Yedo was by no means the largest part of the rice that reached Yedo for sale. There were, besides, the large stores of rice put upon the market by the great lords for whose dominions Yedo was the natural market, as well as the importations of surplus rice from the people of the interior by the wholesale houses. The different amounts, for instance, sold in Yedo about 1860 were as follows:

Rice from the West[1]	99,000	*hyo*
Rice from the Kwanto[2] and the North	1,046,000	,,
Rice sold by the *daimyo* of Sendai, Nambu, and others[3]	532,000	,,
Rice sold from the Government storehouse in Yedo	490,000	,,
Total	2,167,000	,,

in front of the storehouse). But *kura-yado* or *kura-yado-shi* seems properly to have applied, in later times at least, to a number of *samurai*, either *inkyo* (retired) or *yakkai* (dependents, that is, younger brothers, uncles, etc.), who followed privately the same occupation in the same place, and were sometimes sought instead of the *fudasashi* commoners.

1. Known as *kudari-mai*, "down-rice," because it came from the provinces of the Kwansei (west of the Hakone *kwan* or pass), not the Kwanto, or Tokugawa dominions, east of the Hakone pass; see *ante*, p. 26. This was of course the smallest portion. 2. The eight provinces east of the Hakone pass. Of course this rice came from the farmers themselves. 3. In the northern districts which looked to Yedo as the market.

The Government rice was thus at the above period less than a quarter of the whole.[1] The distribution of the rest was effected by the ordinary brokers (*nakagai*) who bought from the wholesale importers and the *daimyo* and sold to the lesser dealers. Before describing the operations of the rice-exchange it will be necessary to note these different classes into which the rice-dealers were divided.

There were 3 chief guilds, which seem to have taken definite and permanent shape in the same period (Kyoho, 1716-1736) that saw the general regulation of trades under the great Shogun Yoshimune and his capable assistant Oka, the Town Magistrate. These were the guilds of the Western-rice[2] wholesalers, the Kwanto[2] rice wholesalers, and the brokers. They all originally plied their trade in the Ise ward, near the banks of the river, where the rice-vessels were moored. The quarter is still known as the *koku-cho* (grain wards) or *kome-gashi* (rice-banks). The Western-rice wholesalers were comparatively few,—some half dozen in all. The Kwanto dealers were known as the "Three Companies of Kwanto-grain Wholesalers." They numbered 20 or more, and were divided into 3 *kumi*, one for each of 3 wards. The brokers (known as the "Rice-brokers of the Eight Wards of the River-banks") were found in 8 wards near the river. They bought from the storehouse-keepers of the *daimyo* and from the wholesale importers, and distributed to the large non-importing houses. Their operations on the rice-exchange equalized the prices and determined the market quotations for Yedo rice. After these three classes, who enjoyed the greatest consideration and were known as *kome-gashi* (men of the rice-banks), came two classes intervening between the ordinary retailers and the brokers and large wholesalers. The first was that of

1. In Osaka this item would not be worth considering. 2. For these two terms, seet he preceding Notes.

the "Local Grain Wholesalers" (*ji-mawari*[1] *beikoku toiya*). These indeed imported directly to some extent the rice of the regions neighboring about Yedo, which came by river boats; but they sold at retail as well as at wholesale. The number was upwards of 300 houses, divided into 11 *kumi*. The original 60 odd *kumi* had been in later times consolidated into these 11, but the original numbers of the *kumi* absorbing the others were retained, so that the numbers remaining were the 1st, 3rd, 18th, 22nd, 26th, 29th, 40th, 44th, 47th, 48th, and 56th. The second class was that of the "Eight Companies of the Lesser Rice-dealers" (*waki-mise*[2] *hakkasho komeya*). Their number was 250 odd, and in later times the companies were 11, not 8. They obtained some of their rice from the local grain wholesalers and some from the brokers, and, with the former class, they served as the immediate suppliers of the petty rice-shops. One of the richest of their companies dealt directly, it seems, with the *daimyos*' storehouse-keepers.

These greater branches of the trade were sometimes known as the "Five Guilds," for the importing and wholesale buying stopped with them, and the further distribution was in the hands of the petty rice-shops. These were of two sorts. The ordinary retailer (*ko-uri-komeya*) bought their rice, still uncleaned, of one of the above houses, and cleaned it by pounding in mortars. Hence their name of "pounding-rice-dealers" (*tsuki-komeya*). These numbered perhaps 2,000. There was also a "highway rice-pounder" (*daido-tsuki*), who sent his men daily about to large houses, to pound the rice for the household. They

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1. *Mawari* means "brought around," in allusion to the usual voyage around the coast to Yedo; the tax-rice thus brought was known as "*on-mawari-mai*." Here the *ji* may mean that it was brought by land, that is, on rivers, not on the sea. The idea involved is expressed by our word "local." 2. Side or lesser shop, in distinction from the *komegashi*.

placed their mortars on the streets and prepared the rice then and there. They are reckoned among the dealers, but seem rather to have been workmen.

To go back now to the brokers and the operations of rice-speculation. Some years ago (1880-81) when the inflation of prices caused by the issuing of paper currency was culminating, the press and the townspeople found fault with the Rice Exchange then recently established by the Government, attributing to its pernicious influence the extraordinary rise in the price of rice; and some were found who extolled the old days when there was no Rice Exchange to injure the people by keeping up prices. The incident illustrates how little is known by the Japanese of the present generation regarding the conditions of life under the old regime, and how little credit the Tokugawa age usually gets, even among the people of this country, for the measure of national development which it witnessed. The truth is that more than 150 years ago a rice exchange was officially sanctioned in Osaka, and that for many decades before, in all probability, the rice-dealers had privately equalized prices by a system similar in principle. There was never in Yedo for any long period a regular exchange authorized by the Government, but various substitutes existed, and from time to time regular exchanges had had a brief existence. In 1725 the rice-exchange at Dojima in Osaka was sanctioned. Four years later permission was given to five *kumi* or sets of houses to establish an exchange in Yedo, and soon the first Yedo rice-exchange (*beisho-kwaisho*, rice-traffic assembly-office, *kome-soba*, rice-market,) had 10 seats (*za*), one for each *kumi*. The members were authorized to buy and sell rice for future delivery. Traffic in rice bills is mentioned, and it seems that a part of the business consisted in buying and selling bills drawn against rice-cargoes. But the exchange had a short life. At this time the price of rice was falling far too low to suit either the farmers or the feudal lords. Within 10

years the price had fallen from 6 *to* per *ryo* to 2 *koku* per *ryo*;[1] and the exchange at Yedo had been permitted only with a view to raising the price. It failed to accomplish this, and in 1731 was abolished. It is not quite clear what reasons the Government had for not sanctioning a general exchange in Yedo as they did in Osaka; possibly they wished to have no influence which could rival that of their storehouses. At any rate their fixed policy was, for the remainder of the Tokugawa regime, to allow no general rice-exchange. Under various names, however, the buying and selling of rice for future delivery was carried on in one way or another on a small scale. The several establishments authorized by the Government were:

(1). In 1785 a "selling-place for Osaka bills representing actual rice[2]"; this was nominally a brokerage house for the Osaka exchange, but in reality it was an exchange, or *kome-soba* (rice-market), as the name then went. It lasted only one year.

(2). In 1813 the chief of the *hishigaki* shipping guild established a rice exchange (*kome-tate-kwaisho*), in the Ise ward, where rice was sold to be delivered in 30 or 60 days. This came to an end in 1819 through the chief's misconduct.

(3). In the meantime rice exchanges were being established by the Three Families,[3] the *daimyo* of Owari, Kii, and Mito, in the compounds of their respective rice-storehouses in Yedo. That of Mito lasted from 1815 to 1830; that of Owari from 1823 to about 1842; that of Kii from 1827 to the same period.

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1. The rice used to be quoted at so many *koku* or *to* per *ryo*. 2. *Sho-mai*. 3. *Go-san-ke*, the three families of the Tokugawa line from whom the Shogun was chosen in case of failure of direct heirs.

The name used was "place for the disposition of tax-rice to be sold",[1] but the business was that of an exchange.

(4). In 1830 one Yamatoya established in the Shoami ward a "place for selling and buying the tax-rice of feudal lords."[2] This prospered greatly, and the name of "three exchanges (*sangwaisho*)" or "three places" (*sambasho*) was given to the exchanges of Kii, Owari, and Yamato. The rules of all three were modelled after those of the Osaka exchange at Dojima.

(5). In 1812 the *daimyo* of Sendai had established a system of selling rice-bills (*kome-kitte*) at an office in his storehouse-compound, called the "selling place for imported-rice bills," this plan being in imitation of the bills issued by the *daimyo* of Higo, Chikuzen, Aki, and Kaga at their storehouses in Osaka.

But all these came to an end with the abolition of guilds in 1842, and no public authorization was again given during the Tokugawa regime.

The methods of the Yedo exchange were, as has been said, the same as those of Osaka. The unit[3] or lot for selling and buying was 100 *koku*. For every lot of 100 *koku* the buyer must deposit 10 *ryo* with the exchange. Settlements were made and balances adjusted every 3 months; and on these occasions a fee of 25 *momme* was paid to the accountant (*motojime*). These shares were reckoned in standard rice (*tatemono-mai*),—that is, the rice of the province where the exchange was. Rice from other provinces was appraised at a certain percentage (higher or lower) with reference to this; and if at a settlement the payment was made by handing over actual rice, the equivalent amount

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1. *Harai-mai sabaki tokoro.* 2. *Sho-ke shunomai hikiuke tokoro.*
3. *Hito-kuchi*, one item.

of outside rice might be given instead of the standard rice. The sessions were held daily, and opened at 10 o'clock a.m. There were four rooms,—the *tomari*, where the brokers waited before the exchange opened; the *choba* (registry-room), where the *cho-tsuke* (registrar) sat; the *uchi-keiki* (private-transactions), where the *sewakata* (manager) was; and the *homba* (main room), where the accountant presided. At the hour appointed the cherry blocks (*hyoshigi*) were clapped, on the order of the manager, in the registry-room, and then the brokers came in on the floor (*doma*, earthen floor) of the main room and began their bidding.[1] The description of this occasion by a Japanese antiquarian (who has never stepped inside the Tokyo Exchange of to-day, and has gained his knowledge entirely from the records and documents of past generations) brings before us a scene of clamorous activity the very counterpart of what may be observed daily at the sessions of modern exchanges. The transactions were noted by the registrar in his book; and after a short time this first selling ceased. The same scene was repeated several times during the day until 4 in the afternoon. At this hour the cherry-clappers were again beaten, by order of the manager, and merchants was set burning in the registry-room. The bidding might be continued while the match lasted, and the prices given during this interval were known as "rope-match prices" (*hinawa-soba*). The match out, the clappers were beaten, and the brokers withdrew to the waiting-room. Those who wished might now make further private bargains, recording them in the private-transaction room with the manager; but these were reckoned as a part of the regular sales of the next day. There were, of course, several variations in the form of the transactions. The *koba*,

1. This was known as *yose-tsuke* (assembling and determining).

for instance, was a sale made in the ante-room, the transaction to be registered and the balance settled within three days, and no margin to be deposited. But these must be left to the historian of Japanese commerce. What remains is to notice one or two of the more common terms applied to the operations of speculation, with their application in the rice-trade.

One of these terms was *totan-sho* or "earth-and-charcoal traffic". The forecast of the weather was obviously a matter of the highest consequence to the brokers. In Japan the farmer has perhaps gone as far as in any country in reducing to rules the results of long observation of the weather. The greater part of the rice crop, for instance, reaches in September a stage which puts it beyond danger from any but extraordinary tempests; yet in the same month rains and typhoons are to be expected. Accordingly experience has settled on the 210th and 220th days of the year (old calendar) as crucial stages in the development of the crop, the 220th day being the outside limit of danger. Thus at this season the forecast of even a single day's weather is of consequence to the rice speculator. The direction of the wind, too, was an important factor in determining the time of the arrival of the rice-cargoes. The speculators of the old days did not fail to utilize such empiric knowledge as they possessed. Every day, morning and evening, they made observatories of their houses, and, mounting to the clothes-drying platform so common to town-houses, they surveyed the sky for weather indications. The Exchange kept a "sky-book," in which nothing was written but the daily changes of weather. One of the chief expedients consisted in hanging balanced quantities of earth (*to*) and charcoal (*tan*) in small nets from opposite ends of a bamboo pole working on a fulcrum. They knew that on the approach of stormy weather earth becomes damp and heavy, while on a dry and clear day it yields its moisture abundantly. Accordingly about the

APPENDIX I.

CALENDAR.[1]

The years were reckoned chiefly by two systems, both of which were sometimes used together to denote a given year. The first was that of *nengo* or year-periods. The fixing of the calendar from time to time, together with the appointing of "year-names" has ever been looked on in the Far-East as among the inviolable privileges and signs of independent sovereignty, much as coining money is in the West. China has its own year-names, which it proudly imposes on such vassal estates as Korea and Thibet. Japan has other year-names. The names are chosen arbitrarily. In China each year-name coincides with the reign of an emperor. This has not hitherto been the case in Japan, though an official announcement has now been made to the effect that reigns and year-names shall so coincide in future. Either way, the confusion introduced into the study of history may be easily imagined. Hardly any Japanese knows all the year-names even of his own country. The most salient ones are, it is true, employed in conversation, much in the same way as we speak of the sixteenth century or the Georgian era. Such are *Engi* (A.D. 901-923), celebrated for the legisla-

1. The ensuing explanation is reproduced, with a few additions and alterations, from Mr. Chamberlain's handy summary in "Things Japanese," *s. v.* "Time." For further details, see Mr. Bramsen's "Japanese Chronological Tables."

tion then undertaken; Genroku (1688-1704) a period of great activity in various arts; Kyoho (1716-1736), an era of administrative reform, stimulated by the great Shogun Yoshimune and his Magistrate Oka, Lord of Echizen; Tempo (1830-1844), the most brilliant time of the present century. But no one could say off-hand how many years it is from one of these periods to another. The *nengo* from 1651 to 1868, with the Western date for the first day of each year, are given with the list of Magistrates in Appendix III.

The second method was that of the zodiac. Years were accounted as belonging to one of the signs of the zodiac (Jap. *ju-ni-shi*), whose order is as follows :—

1. *Ne*, the Rat.	7. *Uma*, the Horse.
2. *Ushi*, the Bull.	8. *Hitsuji*, the Goat.
3. *Tora*, the Tiger.	9. *Saru*, the Ape.
4. *U*, the Hare.	10. *Tori*, the Cock.
5. *Tatsu*, the Dragon.	11. *Inu*, the Dog.
6. *Mi*, the Serpent.	12, *I*, the Boar.

The Japanese have also borrowed from Chinese astrology what are termed the *jik-kan*, or "ten celestial stems"—a series obtained by dividing each of the five elements into two parts, termed respectively the elder and the younger brother (*e* and *to*). The following series is thus obtained :—

1. *Ki no E*	Wood—Elder Brother.
2. *Ki no To*	Wood—Younger Brother.
3. *Hi no E*	Fire—Elder Brother.
4. *Hi no To*, ...	Fire—Younger Brother.
5. *Tsuchi no E*	Earth—Elder Brother.
6. *Tsuchi no To*	Earth—Younger Brother.
7. *Ka no E*	Metal—Elder Brother.
8. *Ka no To*	Metal—Younger Brother.
9. *Mizu no E*.....	Water—Elder Brother.
10. *Mizu no To*	Water—Younger Brother.

The two series—celestial stems and signs of the zodiac—being allowed to run on together, their combination produces the cycle of 60 years, as 60 is the first number divisible both by ten and by twelve. The first year of the cycle is *ki no e ne*, "Wood Elder Brother, Rat;" the second is *ki no to ushi*, "Wood Younger Brother, Bull;" and so on, until the sixtieth, *Mizu no To I*, "Water Younger Brother, Boar," is reached, and the second cycle begins again. But in law cases the usual reference is to "the last year of the Rat," etc., the celestial stems not being employed. Thus ambiguity now and then occurs. Ordinarily the *nengo* and zodiac designations are combined; thus, Bunsei, XII, Ox.

The months were real moons, not artificial periods of 30 or 31 days, and succeeded each other in regular alternation of 29 and 30 days. They were numbered one, two, three, four, and so on, and the days in each month were numbered successively in the same way. Only in poetry did they bear proper names, such as are January, February, and others in European languages. The year consisted of twelve such months, with an intercalary one of 29 days whenever the New Year would otherwise have fallen a whole moon too early. This was about once in 3 years. The Japanese New Year took place late in our January or in the first half of February; and that, irrespective of the state of the temperature, was universally regarded as the beginning of spring. Old Japan had no minutes; her hours were worth two Western hours, and they were counted thus, crab-fashion:—

9 o'clock (*kokonotsu-doki*)	our	12	o'clock,
8 o'clock (*yatsu-doki*)	"	2	"
7 o'clock (*nanatsu-doki*)	"	4	"
6 o'clock (*mutsu-doki*)	"	6	"
5 o'clock (*itsutsu-doki*)	"	8	"
4 o'clock (*yotsu-doki*)	"	10	"

Half-past-nine (*kokonotsu han*) was equivalent to our one o'clock, and similarly in the case of all the other intermediate hours, down to half-past-four, which was equivalent to our eleven o'clock. But the hours were never all of exactly the same length, except at the equinoxes. In summer those of the night were shorter, in winter those of the day. This was because no method of obtaining an average was used, sunrise and sunset being always called six o'clock throughout the year. In the present work the hours have all been rendered in their Western equivalents.

APPENDIX II.

WEIGHTS AND MEASURES.[1]

1. *Measures of length.* Its unit is the foot, *Shaku* or *Kane-shaku*=.30 meter. 1 *Jo*=10 *Shaku*=100 *Sun* (inches)=1,000 *Bu*=10,000 *Rin*=100,000 *Mo*. 6 *Shaku* =1 *Ken*=1.82 meter=1 fathom (about), (1 meter=3′3″ Jap.)

2. *Measures of distance.* The unit is the Japanese mile or 1 *Ri*=3,927.27 meters, (1 geogr. mile=1.886 *Ri*; 28.29 *Ri*=1 degree; 1 *Ri*=2.44 English miles). The Chinese mile or *Li* contains only 447.19 meters=.06 geogr. miles. Accordingly 1 *Ri*=8,782 *Li*.

1 *Ri*=	36 *cho*=	2,160 *Ken*=	12,960 *Shaku*.			
1 " =	60 " =	360 " .				
1 " =	6 " .					

1 *Shaku*=11.9 English inches.

3. *Cloth measure.* The units *Shaku* or *Kujira-shaku*, i.e., fish-bone foot=1¼ *Kane-shaku*=.379 meters; accordingly 1 meter=2.74 *Kujira-shaku*. The smaller denominations are the same as in the common measure of length.

One *Tan* or piece is 26 or more *Shaku* long. One *Hiki*=2 *tan* of silk stuff or 52+*Shaku*.

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1. These tables are adapted from Dr. Rein's presentation (*Japan*, vol. II, p. 507-8), with a few additions from Mr. Bramsen's "Japanese Weights." They give of course the standards in use in Old Japan.

4. *Field measure.* The unit is called *Tsubo* and is equal to 3.306 square meters.

1 *Cho*	=	10 *Tan*	=	100 *Se*	=	3,000 *Tsubo*	=	110,800 sq. *Shaku.*
1 "	=	10 "	=	300	"	=	10,800 "	" .
		1 "	=	30	"	=	1,080 "	" .
				1	"	=	36 "	" .

1 *Cho*=9,917.355 sq. m.=1 Hectare, nearly 2½ acres.

1 *Tan*=nearly ¼ acre.

1 *Tatami* or Japanese foot-mat=3 × 6 *Shaku*=½ *Tsubo.*

5. *Measures of Capacity.* For the unit is taken the *Sho*=1.804 liters.

1 *Koku*	=	10 *To*	=	100 *Sho*	=	1,000 *Go*	=	10,000 *Shaku.*
1 "	=	10	" =	100	" =	1,000	"	.
		1	" =	10	" =	100	"	.
				1	" =	10	"	.

Hence 5 *Sho*=9 liters.

The *Koku* (which is mostly used in measuring grain, while *Sho* and *Go* are used for liquids),=180 bl.=5 bushels, reckoning the bushel at 36 liters. The *Sho* was introduced in the year 1628. Its inner dimensions are 4"9'''×4"9'''×2"7''' Japanese measure.

6. *Weight.* The unit of weight is called *Momme* (*Monme*), i.e. the *Mon*-weight, so designated because the smallest iron coin, *Mon*, used to be taken as the basis of weight. One *Monme* (pronounced *Momme*)=3.756 grammes; hence 1 gr.=.265 *momme.* The Japanese system of weights based hereon is as follows:—

Kwanme	*Hyaku-me*	*Ju-me*	*Mon-me*	*Fun* or *Bu*	*Rin*	*Mo*
1=	10=	100=	1,000=	10,000=	100,000=	1,000,000.
	1=	10=	100=	1,000=	10,000=	100,000.
		1=	10=	100=	1,000=	10,000.
			1=	10=	100=	1,000.
				1=	10=	100.
					1=	10.

$6\frac{1}{4}$ *Kin*=1 *Kwamme* = 3.757 kg.= $8\frac{1}{4}$ lbs. avdp. nearly.

1 *Kin*=160 *Momme*=601.044 gr.=$1\frac{1}{3}$ lbs. avdp. nearly; so that 5 Japanese pounds are to be taken to equal 6 German pounds.

APPENDIX III.

LIST OF MAGISTRATES, 1651-1868.

No complete list exists of the Tokugawa judges. It remains to be made from the mass of records, year-books, etc., on public affairs. Professor Komiyama has published partial lists of the Town Magistrates of Yedo and of others and he has kindly made up for this work some deficiencies in the lists published in the antiquarian magazines. But the record for the last years of the Finance and Temple Magistracies is, unfortunately, still lacking. There are moreover a few discrepancies here and there,—a Magistrate resigning who is not recorded as appointed, or appointed and never resigning. The abbreviation *App.* stands for the appointment, and *Res.* for the resignation. The latter word has for convenience' sake been invariably used; almost all vacating of office would in form at least have been a resignation, except death, and it was not deemed worth while to note particularly the mode in which the office was vacated. It would have been desirable to indicate to the eye more clearly the length of time each Magistrate was in office; but this could only be accomplished at too great a sacrifice of space. The titles, it should always be remembered, are purely honorary; they are explained in the early part of this volume.

The Western date given for each year is that of the first day of the Japanese year.

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
KYOWA.	IV. 1651, Feb. 20.	Matsudaira, Lord of Idzumi. Ando, Governor of Kyoto.	Kamiwo, Lord of Buzen. Ishiya, Under-Minister of the Interior.	Some Genyemon. Murakoshi, Lord of Nagato.
JOWO.	I. 1652, Feb. 10.			
	II. 1653, Jan. 29.			
	III. 1654, Feb. 17.			
MEIREKI.	I. 1655, Feb. 7.			
	II. 1656, Jan. 27.			
	III. 1657, Feb. 13.			
MANJI.	I. 1658, Feb. 3.	*App.* Inouye, Lord of Kawachi. *App.* Itakura, Lord of Awa. *Res.* Ando, Governor of Kyoto.	*Res.* Ishiya, Under-Minister of the Interior. *App.* Murakoshi. Lord of Nagato.	
	II. 1659, Feb. 22.	Matsudaira, Lord of Idzumi.		*Res.* Murakoshi, Lord of Nagato.

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
MANJI.	III. 1660, Feb. 11.			*App.* Okada, Lord of Buzen. *App.* Itami, Lord of Harima.
KAMBUN.	I. 1661, Jan. 31.	*App.* Kogatsume, Lord of Kai. *Res.* Itakura, Lord of Awa.	*Res.* Kamiwo, Lord of Buzen. *App.* Watanabe, Lord of Osumi.	*Res.* Sone Genyemon,
	II. 1662, Feb. 19.			*Res.* Itami, Lord of Harima.
	III. 1663, Feb. 8.			
	IV. 1664, Jan. 28.			
	V. 1665. Feb. 15.			
	VI. 1666, Feb. 4.	*App.* Ogasawara, Lord of Yamashiro.	*Res.* Murakoshi, Lord of Nagato. *App.* Shimada, Lord of Idzumo.	*App.* Matsuura Iyemon.
	VII. 1667, Jan. 24.	*Res.* Inouye, Lord of Kawachi.		
	VIII. 1668, Feb. 12.			*App.* Sugiura, Chief of Imperial Attendants.

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
Kambun.	IX. 1669, Feb. 1.			
	X. 1670, Feb. 20.	*Res.* Kogatsume, Lord of Kai.		*Res.* Okada, Lord of Buzen. *App.* Tokuyama Gobei.
	XI. 1671, Feb. 10.	*App.* Honda, Lord of Yamashiro. *App.* Toda, Lord of Iga.		
	XII. 1672. Jan. 30.			*Res.* Sugiura, Chief of Imperial Attendants.
Yempo.	I. 1673, Feb. 17.		*App.* Miyazaki, Lord of Wakasa.	*App.* Kaikiyemon.
	II. 1674, Feb. 6.			*Res.* Matsuura Iyemon.
	III. 1675, Jan. 26.			*App.* Okabe, Lord of Suruga.
	IV. 1676, Feb. 14.	*Res.* Toda, Lord of Iga. *Res.* Honda, Lord of Yamashiro. *App.* Oda, Lord of Settsu.		
	V. 1677, Feb. 2.	*App.* Itakura, Steward of Imperial Supplies.		

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
Yempo.	VI. 1678, Feb. 21.	*Res.* Ogasawara, Lord of Yamashiro. *Res.* Oda, Lord of Settsu. *App.* Matsudaira, Lord of Yamashiro.		
	VII. 1679, Feb. 11.			*Res.* Kaikiyemon.
	VIII. 1680, Feb. 1.	*Res.* Itakura, Steward of Imperial Supplies. *App.* Abe, Lord of Bugo.	*Res.* Matsudaira, Captain of the Imperial Body-Guard. *Res.* Miyazaki, Lord of Wakasa. *App.* Kainocho, Lord of Hida.	*App.* Oka, Lord of Bizen. *App.* Hikosaka, Lord of Hoki. *App.* Takagi, Lord of Ise.
Tenna.	I. 1681, Feb. 19.	*Res.* Matsudaira, Lord of Yamashiro. *Res.* Abe, Lord of Bugo. *App.* Mizuno, Warden of the Palace Gate. *Res.* Inabe, Lord of Tango. *App.* Akimoto, Lord of Tajima. *App.* Sakai, Lord of Yamato.	*Res.* Shimada, Lord of Idzumo. *App.* Hojo, Lord of Awa.	*Res.* Tokuyama Gohei.
	II. 1682, Feb. 8.	*Res.* Akimoto, Lord of Tajima. *App.* Sakamoto, Warden of the Palace Gate.		*Res.* Takagi, Lord of Ise. *App.* Nakayama, Lord of Totomi.
	III. 1683, Jan. 28.	*Res.* Sakai, Lord of Yamato.		

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
TENNA.	III. 1683, Jan. 28.	*App.* Itakura, Lord of Iyo. *App.* Honda, Lord of Awaji.		
JOKYO.	I. 1684, Feb. 16.	*Res.* Itakura, Lord of Iyo.		*Res.* Okabe, Lord of Suruga.
	II. 1685, Feb. 4.	*Res.* Midzuno, Warden of the Palace Gate. *App.* Okubo, Lord of Oki.		*Res.* Nakayama. Lord of Totomi. *Res.* Matsudaira. Captain of Imperial Body-Guard. *App.* Sengoku, Lord of Idzumi.
	III. 1686, Jan. 24.			
	IV. 1687, Feb. 12.	*Res.* Sakamoto, Warden of the Palace Gate. *Res.* Honda, Lord of Awaji. *Res.* Okubo, Lord of Oki. *App.* Sakai, Lord of Kawachi. *App.* Yonezawa, Lord of Dewa. *App.* Toda, Lord of Noto.		*Res.* Oka, Lord of Bizen. *Res.* Hikosaka, Lord of Hoki. *Res.* Sengoku, Lord of Idzumi. *App.* Sano, Lord of Nagato. *App.* Kosuga, Lord of Totomi.
GENROKU.	I. 1688, Feb. 2.	*App.* Honda, Lord of Kii.		*Res.* Sano, Lord of Nagato. *App.* Matsudaira, Lord of Mino. *App.* Toda, Lord of Mino.

Period.	*Year.*	*Temple Magistrates.*	*Town Magistrates.*	*Finance Magistrates.*
GENROKU.	II. 1689, Jan. 21.	*Res.* Sakai, Lord of Kawachi. *App.* Kato, Lord of Echu.		*Res.* Toda, Lord of Mino. *App.* Inaba, Lord of Shimodzuke.
	III. 1690, Feb. 9.	*Res.* Kato, Lord of Echu. *App.* Ogasawara, Lord of Sado.	*Res.* Kainocho. Lord of Hida. *App.* Noze, Lord of Idzumo.	
	IV. 1691, Jan. 29.	*App.* Matsuura. Lord of Iki.		
	V. 1692, Feb. 17.	*Res.* Yonezawa, Lord of Dewa.		
	VI. 1693, Feb. 5.		*Res.* Hojo, Lord of Awa. *App.* Kawaguchi, Lord of Settsu.	
	VII. 1694, Jan. 25.	*Res.* Matsuura, Lord of Iki. *App.* Nagai. Lord of Idzu.		*App.* Ido, Lord of Tsushima.
	VIII. 1695, Feb. 13.			
	IX. 1696, Feb. 3.	*Res.* Honda, Lord of Kii. *App.* Inouye, Lord of Kawachi. *App.* Matsudaira, Lord of Shima.		*App.* Hagiwara, Lord of Omi.

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
Genroku.	X. 1697. Jan. 23.		*App.* Matsumaye, Lord of Idzu.	
	XI. 1698. Feb. 11.		*Res.* Kawaguchi, Lord of Settsu.	
	XII. 1699. Jan. 31.	*Res.* Toda, Lord of Noto. *Res.* Inouye, Lord of Kawachi. *App.* Abe, Lord of Hida.	*App.* Aoyama, Lord of Harima.	*Res.* Inaba, Lord of Shimodzuke. *App.* Kugai, Lord of Inaba. *App.* Togawa, Lord of Bizen.
	XIII. 1700, Feb. 19.			
	XIV. 1701, Feb. 8.	*App.* Aoyama, Lord of Harima.	*Res.* Aoyama. Lord of Harima,	
	XV. 1702, Jan. 28.	*Res.* Aoyama, Lord of Harima. *App.* Honda, Minister of Justice.	*App.* Niwa, Lord of Totomi.	*Res.* Ido, Lord of Tsushima. *App.* Nakayama, Lord of Idzumo.
	XVI. 1703, Feb. 16.		*Res.* Matsumaye, Lord of Idzu. *App.* Hayashi, Lord of Tosa.	
Hoyei.	I. 1704, Feb. 5.	*Res.* Nagai, Lord of Idzu. *Res.* Abe, Lord of Hida. *App.* Miyaki, Lord of Bizen. *App.* Kuze, Lord of Yamato.	*App.* Matsudaira, Lord of Iki.	

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
Hoyei.	II. 1705, Jan. 25.	*Res.* Kuze, Lord of Yamato. *App.* Torii, Lord of Iga. *App.* Hori, Lord of Tango.	*Res.* Hayashi, Lord of Tosa. *App.* Tsubouchi, Lord of Noto.	*Res.* Kugai, Lord of Inaba. *App.* Ishiwo, Lord of Awa.
	III. 1706, Feb. 3.			
	IV. 1707, Feb. 3.			
	V. 1708, Jan. 23.	*Res.* Hori, Lord of Tango.		*Res.* Togawa, Lord of Bizen, *Res.* Ishiwo, Lord of Awa. *App.* Hiraiwa, Lord of Wakasa. *App.* Okubo, Lord of Osumi.
	VI. 1709, Feb. 10.	*App.* Ando, Governor of Kyoto.		
	VII. 1710, Jan. 30.	*Res.* Miyaki, Lord of Bizen. *App.* Morikawa, Lord of Idzumo.		
Shotoku.	I. 1711, Feb. 17.	*Res.* Torii, Lord of Iga. *App.* Matsudaira, Lord of Sagami.		*Res.* Hagiwara, Lord of Omi. *App.* Midzuno, Lord of Tsushima,
	II. 1712, Feb. 7.			

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
SHOTOKU.	III. 1713, Jan. 26.	*Res.* Honda, Minister of Justice. *Res.* Ando, Governor of Kyoto. *App.* Doi, Lord of Iyo.		*Res.* Hirasiwa, Lord of Wakasa. *App.* Midzuno, Lord of Hoki.
	IV. 1714, Feb. 15.	*Res.* Morikawa, Lord of Idzumo. *App.* Tatebe, Minister of Public Works. *App.* Ishikawa, Lord of Omi.	*Res.* Niwa, Lord of Totomi. *App.* Nakayama, Lord of Idzumo.	*Res.* Nakayama, Lord of Idzumo. *App.* Ise, Lord of Ise.
	V. 1715, Feb. 4.	*Res.* Tatebe, Minister of Public Works. *App.* Inouye, Lord of Totomi.		
KYOHO.	I. 1716, Jan. 25.	*Res.* Inouye, Lord of Totomi.		*Res.* Okubo, Lord of Omi. *App.* Okubo, Lord of Shimotsuke.
	II. 1717, Feb. 11.	*Res.* Ishikawa, Lord of Omi. *App.* Ando, Governor of Kyoto.	*Res.* Matsudaira, Lord of Iki. *App.* Oka, Lord of Echizen.	
	III. 1718, Jan. 31.	*Res.* Ando, Governor of Kyoto. *App.* Makino, Lord of Inaba. *App.* Sakai, Minister of Palace Repairs.		

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
	XVII. 1732, Jan. 27.	*App.* Matsudaira, Minister of Foreign Affairs.		
	XVIII. 1733, Feb. 14.			
Kyoho.	XIX. 1734. Feb. 4.	*Res.* Inouye, Lord of Kawachi. *Res.* Nishiwo, Lord of Oki. *Res.* Matsudaira, Minister of Foreign Affarirs. *App.* Sengoku, Lord of Shinano. *App.* Hojo, Lord of Totomi.		*Res.* Kakehi, Lord of Harima. *Res.* Matsudaira, Captain of the Imperial Body-Guard. *App.* Kanyo, Lord of Shima. *App.* Ishino, Lord of Chikugo.
	XX. 1735, Jan. 24.	*Res.* Sengoku, Lord of Shinano. *Res.* Hojo, Lord of Totomi. *App.* Makino, Lord of Echizen. *App.* Matsudaira, Lord of Kii.		
Gembun.	I. 1736, Feb. 12.	*App.* Oka, Lord of Echizen.	*Res.* Oka, Lord of Echizen. *App.* Matsunami, Lord of Chikugo.	*Res.* Matsunami, Lord of Chikugo. *App.* Kawano, Lord of Buzen.
	II. 1737, Jan. 31.			*Res.* Hosoda, Lord of Tamba, *App.* Kamiwo, Lord of Wakasa.

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
GEMBUN.	III. 1738, Feb. 19.		*Res.* Inaba, Lord of Shimotsuke. *App.* Ishikawa, Lord of Tosa.	*Res.* Sugioka, Lord of Sado. *App.* Midzuno, Lord of Tsushima. *App.* Sakurai, Lord of Kawachi.
	IV. 1739, Feb. 8.	*Res.* Matsudaira, Lord of Kii. *App.* Yamano, Lord of Inaba. *App.* Honda, Lord of Hoki.	*Res.* Matsunami, Lord of Chikugo. *App.* Midzuno, Lord of Bizen.	*Res.* Sakurai, Lord of Kawachi. *App.* Kinoshita, Lord of Iga.
	V. 1740, Jan. 29.		*Res.* Midzuno, Lord of Bizen. *App.* Shima, Lord of Nagato.	
KAMPO.	I. 1741, Feb. 16.			
	II. 1742, Feb. 5.	*Res.* Makino, Lord of Echizen. *App.* Hotta, Lord of Sagami.		*Res.* Kawano, Lord of Buzen.
	III. 1743, Jan. 26.			*App.* Hagiwa, Lord of Hoki.
YENKYO.	I. 1744, Feb. 14.	*Res.* Hotta, Lord of Sagami. *App.* Matsudaira, Under-Minister of the Interior.	*Res.* Ishikawa, Lord of Tosa. *App.* Noze, Lord of Higo.	*Res.* Midzuno, Lord of Tsushima. *App.* Hayami, Lord of Dewa.

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
	II. 1745, Feb. 1.			*Res.* Hagiwa, Lord of Hoki.
YENKYO.	III. 1746, Feb. 20.	*Res.* Honda, Lord of Hoki. *App.* Akimoto, Lord of Settsu. *App.* Koide, Lord of Shinano.	*Res.* Shima, Lord of Nagato. *App.* Baba, Lord of Sanuki.	*Res.* Kinoshita, Lord of Iga. *App.* Matsuura, Lord of Kawachi.
	IV. 1747, Feb. 10.	*Res.* Yamano, Lord of Inaba. *Res.* Akimoto, Lord of Settsu. *App.* Matsudaira, Steward of Imperial Supplies. *App.* Inaba, Lord of Tango.		
	I. 1748, Jan. 30.	*Res.* Koide, Lord of Shinano. *App.* Aoyama, Lord of Inaba. *App.* Sakai, Lord of Yamashiro.		*Res.* Hayami, Lord of Idzumo. *App.* Magaribuchi, Lord of Bungo.
KWANYEN.	II. 1749, Feb. 17.	*Res.* Sakai, Lord of Yamashiro. *App.* Honda, Chief of Imperial Magazines.		*Res.* Kamiwo, Lord of Wakasa. *App.* Yendo, Lord of Ise. *App.* Mitsui, Lord of Kadzusa.
	III. 1750, Feb. 7.	*Res.* Inaba, Lord of Tango.	*Res.* Baba, Lord of Sanuki. *App.* Yamada, Lord of Idzu.	

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
HOREKI.	I. 1751, Jan. 27.	*Res.* Oka, Lord of Echizen. *App.* Matsudaira, Governor of Kyoto.		*Res.* Yendo, Lord of Ise. *Res.* Mitsui, Lord of Kadzusa.
	II. 1752, Feb. 15.	*Res.* Matsudaira, Governor of Kyoto. *App.* Torii, Lord of Iga.		*App.* Nagai, Lord of Tamba. *App.* Isshiki, Lord of Suwo.
	III. 1753, Feb. 3.		*Res.* Yamada, Lord of Idzu. *App.* Toda, Lord of Buzen. *App.* Tsuchiya, Lord of Echizen.	*Res.* Matsuura, Lord of Kawachi. *Res.* Nagai, Lord of Tamba. *App.* Matsudaira, Minister of Foreign Affairs. *App.* Oi, Lord of Ise.
	VI. 1754, Jan. 23.			*Res.* Matsudaira, Minister of Foreign Affairs. *App.* Ohashi, Lord of Omi.
	V. 1755, Feb. 11.			*App.* Nakayama, Lord of Totomi.
	VI. 1756, Jan. 31.	*App.* Abe, Lord of Iyo.		*App.* Oi, Lord of Ise. *App.* Hosoda, Lord of Tamba.
	VII. 1757, Feb. 18.			*Res.* Nakayama, Lord of Totomi. *App.* Suganuma, Lord of Shimotsuke.

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
HOREKI.	VIII. 1758, Feb. 8.	*Res.* Aoyama, Lord of Inaba. *Res.* Honda, Chief of Imperial Magazines. *App.* Tochigi, Lord of Tosa.		*Res.* Ohashi, Lord of Omi. *Res.* Suganuma, Lord of Shimotsuke. *App.* Inaba, Lord of Shimotsuke. *App.* Obata, Lord of Yamashiro.
	IX. 1759, Jan. 29.	*App.* Matsudaira, Lord of Suwo. *App.* Mori, Lord of Sanuki.		*Res.* Hosoda, Lord of Tamba. *App.* Ishiya, Lord of Bigo.
	X. 1760, Feb. 17.	*Res.* Torii, Lord of Iga. *Res.* Abe, Lord of Iyo. *Res.* Matsudaira, Lord of Suwo. *App.* Matsudaira, Lord of Idzumi. *App.* Kobori, Lord of Tosa.	*App.* Oda, Lord of Settsu.	*Res.* Inaba, Lord of Shimotsuke. *App.* Tsubouchi, Lord of Suruga.
	XI. 1761, Feb. 5.	*Res.* Kobori, Lord of Tosa. *App.* Sakai, Lord of Hida.		*Res.* Obata, Lord of Yamashiro. *Res.* Tsubouchi, Lord of Suruga. *App.* Ando, Imperial Official. *App.* Makino, Lord of Osumi.
	XII. 1762, Jan. 25.		*Res.* Oda, Lord of Settsu.	*App.* Ono, Lord of Hyuga.
	XIII. 1763, Feb. 13.	*App.* Doi, Keeper of Imperial Rice-storehouses.		

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
MEIWA.	I. 1764, Feb. 2.	*Res.* Mori, Lord of Sanuki. *Res.* Matsudaira, Lord of Idzumi. *App.* Matsudaira, Lord of Iga. *App.* Toki, Lord of Mino.		
	II. 1765, Feb. 20.	*Res.* Sakai, Lord of Hida. *App.* Kuze, Lord of Idzumo.		*Res.* Isshiki, Lord of Suwo. *App.* Ina, Lord of Bizen.
	III. 1766, Feb. 9.			
	IV. 1767, Jan. 30.			
	V. 1768, Feb. 18.		*Res.* Tsuchiya, Lord of Echizen. *App.* Makino, Lord of Osumi.	*Res.* Makino, Lord of Osumi. *App.* Matsudaira, Lord of Tsushima.
	VI. 1769, Feb. 7.	*Res.* Doi. Keeper of Imperial Rice-storehouses. *Res.* Kuze, Lord of Idzumo. *App.* Makino, Lord of Echu. *App.* Tsuchiya, Lord of Noto.	*Res.* Toda, Lord of Buzen. *App.* Magaribuchi, Lord of Kai.	*Res.* Ina, Lord of Bizen.
	VII. 1770, Jan. 27.			

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
MEIWA.	VIII. 1771, Feb. 15.			*Res.* Ono. Lord of Hyuga. *App.* Kawai, Lord of Echizen.
ANYEI.	I. 1772, Feb. 4.			
	II. 1773, Jan. 23.			*Res.* Matsudaira. Lord of Tsushima. *App.* Oda, Lord of Harima.
	III. 1774, Feb. 11.			
	IV. 1775, Jan. 31.	*Res.* Matsudaira. Lord of Iga. *App.* Oda, Lord of Bigo.		*Res.* Kawai, Lord of Echizen. *App.* Arami, Lord of Kaga.
	V. 1776, Feb. 19.	*Res.* Tsuchiya, Lord of Noto. *App.* Toda, Lord of Inaba.		*Res.* Arami, Lord of *App.* Kuwabara, Lord of Noto.
	VI. 1777, Feb. 8.	*Res.* Makino, Lord of Echu. *App.* Makino, Lord of Buzen. *App.* Abe, Lord of Bichu.		
	VII. 1778, Jan. 28.			*Res.* Oda. Lord of Harima. *App.* Yamamura, Lord of Shinano.

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
ANYEI.	VIII. 1779, Feb. 16.			*Res.* Ishiya, Lord of Bugo, *App.* Matsumoto, Lord of Idzu.
	IX. 1780, Feb. 5.			
TEMMEI.	I. 1781, Jan. 24.	*Res.* Toki, Lord of Mino. *Res.* Oda, Lord of Bigo. *App.* Inouye, Lord of Kawachi, *App.* Ando, Lord of Tsushima.		
	II. 1782, Feb. 12.	*Res.* Toda, Lord of Inaba.		*Res.* Ando, Imperial Official. *App.* Akai, Lord of Echizen.
	III. 1753, Feb. 2.	*Res.* Makino, Lord of Buzen. *App.* Hotta, Lord of Sagami.		
	IV. 1784, Jan. 22.	*Res.* Ando, Lord of Tsushima. *App.* Matsudaira, Governor of Kyoto. *App.* Matsudaira, Lord of Hoki.	*Res.* Makino, Lord of Osumi. *App.* Yamamura, Lord of Shinano.	*Res.* Yamamura, Lord of Shimano. *App.* Kuze, Lord of Tango.
	V. 1785, Feb, 9.			

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
Temmei.	VI. 1786, Jan. 30.	*Res.* Inouye, Lord of Kawachi, *App.* Inaba, Lord of Tango.		*Res.* Akai. Lord of Echizen. *Res.* Matsumoto, Lord of Idzu. *App* Aoyama, Lord of Tajima. *App.* Tsuge, Lord of Nagato.
	VII. 1787, Feb. 18.	*Res.* Matsudaira, Lord of Hoki. *Res.* Hotta, Lord of Sagami. *Res.* Abe, Lord of Bichu. *App.* Makino, Lord of Bizen.	*Res.* Magaribuchi. Lord of Kai. *App.* & *Res.* Ishikawa. Lord of Tosa. *App.* Yagyu, Under-Steward of Imperial Supplies	*Res.* Aoyama, Lord of Tajima. *App.* Negishi, Lord of Hizen.
	VIII. 1788. Feb. 7.	*Res.* Inaba, Lord of Tango. *App.* Matsudaira, Lord of Kii. *App.* Itakura, Under-Minister of the Interior.	*Res.* Yagyu, Under-Steward of Imperial Supplies. *App.* Hatsukano, Lord of Kawachi.	*Res.* Kuwabara, Lord of Noto, *Res.* Tsuge, Lord of Nagato. *App.* Kubota, Lord of Sado. *App.* Magaribuchi, Lord of Kai. *App.* Yagyu, Under-steward of Imperial Supplies.
Kwansei.	I. 1789, Jan. 26,	*App.* Toda, Superintendent of Palace Maidservants.	*Res.* Yamamura, Lord of Shinano. *App.* Ikeda, Lord of Chikugo.	
	II. 1790, Feb. 14.	*Res.* Toda, Superintendent of Palace Maidservants.		

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
KWANSEI.	III. 1791, Feb. 3.	*Res.* Matsudaira, Lord of Kii, *App.* Wakizaki, Minister of the Imperial Household.[1]	*Res.* Hatsukawa, Lord of Kawachi. *App.* Odagiri, Lord of Tosa.	
	IV. 1792, Jan. 24.	*Res.* Makino, Lord of Bizen. *App.* Tachibana, Lord of Idzumo.		*Res.* Kubota, Lord of Sado. *App.* Sabashi, Lord of Nagato.
	V. 1793, Feb. 11.	*Res.* Tachibana, Lord of Idzumo. *App.* Aoyama, Lord of Shimotsuke.		
	VI. 1794, Jan. 31.			*Res.* Sabashi, Lord of Nagato. *App.* Mamiya, Lord of Chikuzen.
	VII. 1795, Feb. 19.		*Res.* Ikeda, Lord of Chikugo. *App.* Sakabe, Lord of Noto.	
	VIII. 1796, Feb. 9.	*Res.* Aoyama, Lord of Shimotsuke. *App.* Doi, Keeper of Imperial Rice-storehouses.[2]	*Res.* Sakabe, Lord of Noto. *App.* Murakami, Lord of Higo.	

1. This Magistrate was also and originally Lord of Awaji (see No. 8, Part III, Section I); but the territorial title is the less honorable, and the other is here used. 2. Different from the one resigning in 1769.

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
	IX. 1797, Jan. 28.			*Res.* Magaribuchi, Lord of Kai. *Res.* Kuze, Lord of Tango. *Res.* Mamiya, Lord of Chikuzen. *App.* Nakagawa, Lord of Hida, *App.* Ishikawa. Under-Minister of the Interior. *App.* Suganuma, Lord of Shimotsuke.
KWANSEI.	X. 1798. Feb. 16.	*Res.* Matsudaira, Governor of Kyoto. *Res.* Itakura, Under-Minister of the Interior. *App.* Matsudaira, Lord of Suwo.	*Res.* Murakami, Lord of Higo. *App.* Negishi, Lord of Hizen.	*Res.* Negishi, Lord of Hizen. *App.* Matsudaira, Lord of Iwami.
	XI. 1799. Feb. 5.	*App.* Uyemura, Lord of Suruga.		*Res.* Matsudaira, Lord of Hida.
	XII. 1800. Jan. 25.	*Res.* Uyemura, Lord of Suruga. *App.* Hotta, Lord of Buzen.		*App.* Ogasawara, Lord of Idzumo.
KYOWA.	I. 1801. Feb. 13.	*Res.* Doi, Keeper of Imperial Rice-storehouses. *App.* Abe, Lord of Harima.		

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
KYOWA.	II. 1802, Feb. 3.	*App.* Aoyama, Steward of Imperial Supplies. *App.* Matsudaira, Governor of Kyoto.[1]		*Res.* Suganuma, Lord of Shimotsuke. *App.* Matsudaira, Chief of Imperial Magazines.
	III. 1803, Jan. 23.	*Res.* Matsudaira, Lord of Suwo. *App.* Mizuno, Lord of Dewa.		
BUNKWA.	I. 1804, Feb. 11.	*Res.* Abe, Lord of Harima. *App.* Okubo, Lord of Aki.		
	II. 1805, Jan. 31.			
	III. 1806, Feb. 18.	*Res.* Hotta, Lord of Buzen. *Res.* Mizuno, Lord of Dewa. *App.* Abe, Minister of Imperial Revenues.		*Res.* Nakagawa, Lord of Hida. *Res.* Ishikawa, Under-Minister of the Interior. *App.* Mizuno, Lord of Wakasa.
	IV. 1807, Feb. 7.			
	V. 1808, Jan. 28.	*Res.* Abe, Minister of Imperial Revenues.		

1. Different from the one resigning in 1798.

Period.	*Year.*	*Temple Magistrates.*	*Town Magistrates.*	*Finance Magistrates.*
BUNKWA.	VI. 1809. Feb. 14.	*App.* Matsudaira, Lord of Idzumo.		*Res.* Mizuno, Lord of Wakasa.
	VII. 1810. Feb. 4.	*Res.* Okubo, Lord of Aki. *App.* Arima, Commander of the Guard.		*App* Hida, Lord of Bugo, *App.* Nagate, Lord of Bigo.
	VIII. 1811. Jan. 25.		*Res.* Odagiri, Lord of Tosa. *App.* Nagate, Lord of Bigo.	*Res.* Nagate, Lord of Bigo. *App.* Arita, Lord of Harima.
	IX. 1812. Feb. 13	*Res.* Arima, Commander of the Guard. *App.* Abe, Lord of Bichu.		*Res.* Ogasawara. Lord of Idzumo. *Res.* Arita, Lord of Harima. *App.* Magaribuchi, Lord of Kai. *App.* Obase, Lord of Nagato.
	X. 1813, Feb. 1.	*Res.* Wakizaki, Minister of the Imperial Household. *Res.* Matsudaira, Lord of Idzumo. *App.* Naito, Lord of Buzen. *App.* Matsudaira, Under-Minister of the Interior.		
	XI. 1814. Feb. 20.			*Res.* Obase, Lord of Nagato. *App.* Iwase, Lord of Kaga.

Period.	*Year.*	*Temple Magistrates.*	*Town Magistrates.*	*Finance Magistrates.*
BUNKWA.	XII. 1815, Feb. 9.	*Res.* Matsudaira, Governor of Kyoto. *Res.* Aoyama, Steward of Imperial Supplies.	*Res.* Negishi, Lord of Hizen. *App.* Iwase, Lord of Kaga.	*Res.* Hida, Lord of Bugo. *Res.* Iwase, Lord of Kaga. *App.* Sakakibara, Minister of Imperial Revenues.
	XIII. 1816, Jan. 29.			*Res.* Magaribuchi, Lord of Kai. *App.* Hattori, Lord of Iga. *App.* Tsuchiya, Lord of Kii. *App.* Furukawa, Lord of Yamashiro.
	XIV. 1817, Feb. 16.	*Res* Abe, Lord of Bichu. *Res.* Naito, Lord of Buzen. *App.* Matsudaira, Lord of Suwo. *App.* Mizuno, Under-Minister of the Interior.		*Res.* Yagyu, Under-Steward of Imperial Supplies.
BUNSEI.	I. 1818, Feb. 5.	*App.* Matsudaira, Lord of Hoki.		*App.* Muragaki, Lord of Awaji.
	II. 1819, Jan. 26.		*Res.* Nagate, Lord of Bigo. *App.* Sakakibara, Minister of Imperial Revenues.	*Res.* Sakakibara, Minister of of Imperial Revenues. *Res.* Hattori, Lord of Iga. *Res.* Tsuchiya, Lord of Kii. *App.* Ishikawa, Steward of Imperial Waters. *App.* Toyama, Warden of the Palace Gate.

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
Bunsei.	III. 1820, Feb. 14.		*Res.* Iwase, Lord of Kaga. *App.* Arawo, Lord of Tajima.	*Res.* Furukawa, Lord of Yamashiro. *App.* Matsuura, Lord of Ise.
	IV. 1821. Feb. 3.		*Res.* Arawo, Lord of Tajima. *App.* Tsutsui, Lord of Kii.	
	V. 1822. Jan. 23.	*Res.* Matsudaira, Under-Minister of the Interior. *Res.* Matsudaira, Lord of Suwo. *App.* Honda, Lord of Buzen.		
	VI. 1823, Feb. 11.	*App.* Oda, Lord of Settsu.		*Res.* Matsuura, Lord of Ise. *App.* Soga, Lord of Bugo.
	VII. 1824, Jan. 31.			
	VIII. 1825, Feb. 18.	*Res.* Mizuno, Under-Minister of the Interior. *Res.* Honda, Lord of Buzen. *App.* Matsudaira, Lord of Idzumo. *App.* Doi, Keeper of Imperial Rice-storehouses.		

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
Bunsei.	IX. 1826, Feb, 7.	*Res.* Matsudaira, Lord of Hoki. *App.* Hori, Lord of Yamato.		
	X. 1827, Jan. 27,			[Beyond here no list is in existence.]
	XI. 1828, Feb. 15.	*Res.* Oda, Lord of Settsu. *Res.* Hori, Lord of Yamato. *App.* Tsuchiya. Lord of Sagami. *App.* Matsudaira, Lord of Tango.		
	XII. 1829, Feb. 4.	*Res.* Doi, Keeper of Imperial Rice-storehouses. *App.* Wakizaki, Minister of the Imperial Household.[1]		
Tempo.	I. 1830, Jan. 25.	*App.* Mabe, Lord of Shimosa.		
	II. 1831, Feb. 13,	*Res.* Matsudaira, Lord of Idzumo. *Res.* Matsudaira, Lord of Tango.		
	III. 1832, Feb, 2.			

1. The same one who resigned in 1813.

Period.	*Year.*	*Temple Magistrates.*	*Town Magistrates.*	*Finance Magistrates.*
TEMPO.	IV. 1833, Feb. 20.			
	V. 1834, Feb. 9.	*Res.* Tsuchiya, Lord of Sagami. *App.* Inouye, Lord of Kawachi. *App.* Hotta, Lord of Bichu.		
	VI. 1835, Jan. 29.			
	VII. 1836, Feb. 17.		*Res.* Sakakibara, Minister of Imperial Revenues. *App.* Okusa, Lord of Awa.	
	VIII. 1837, Feb. 5.	*Res.* Hotta, Lord of Bichu. *App.* Aoyama, Lord of Inaba.		
	IX. 1838. Jan. 26.	[Beyond here no list is in existence.]		
	X. 1839, Feb. 14.			
	XI. 1840. Feb. 3.		*Res.* Okusa, Lord of Awa. *App.* Toyama, Warden of the Palace Gate.	

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
Tempo.	XII. 1841, Jan. 23.		*Res.* Tsutsui, Lord of Kii. *App. & Res.* Yabe, Lord of Suruga. *App.* Torii, Lord of Kai.	
	XIII. 1842. Feb. 10.			
	XIV. 1843, Jan. 30.		*Res.* Toyama, Warden of the Palace Gate. *App. & Res.* Abe, Lord of Totomi. *App.* Nabeshima. Minister of Public Works.	
Kokwa.	I. 1844, Feb. 18.		*Res.* Torii, Lord of Kai. *App.* Atobe, Lord of Noto.	
	II. 1845, Feb. 7,		*Res.* Atobe, Lord of Noto. *App.* Toyama, Warden of the Palace Gate.[1]	
	III. 1846, Jan. 27.			
	IV. 1847, Feb. 15.			

1. The same who resigned in 1843.

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
KAYEI.	I. 1848, Feb. 5.		*Res.* Nabeshima, Minister of Public Works. *App.* Makino, Lord of Suruga.	
	II. 1849, Jan. 24.		*Res.* Makino, Lord of Suruga. *App.* Ido, Lord of Tsushima.	
	III. 1850, Feb. 12.			
	IV. 1851, Feb. 1.			
	V. 1852, Jan. 21.		*Res.* Toyama, Warden of the Palace Gate. *App.* Ikeda, Lord of Harima.	
	VI. 1853, Feb. 8.			
ANSEI.	I. 1854, Jan. 29.			
	II. 1855, Feb. 17.			
	III. 1856, Feb. 6.		*Res.* Ido, Lord of Tsushima.	

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
Ansei.	III. 1856, Feb. 6.		*App.* Atobe, Lord of Kai.	
	IV. 1857, Jan. 26.		*Res.* Ikeda, Lord of Harima. *App.* Izawa, Lord of Mimasaka.	
	V. 1858, Feb. 14.		*Res.* Atobe, Lord of Kai. *Res.* Izawa, Lord of Mimasaka. *App.* Ishiya, Lord of Inaba. *App.* Ikeda, Lord of Harima.	
	VI. 1859, Feb. 3.			
Manyen.	I. 1860, Jan. 23.			
Bunkin.	I. 1861. Feb. 10.		*Res.* Ikeda, Lord of Harima. *App.* Kurokawa, Lord of Bichu.	
	II. 1862, Jan. 30.		*Res.* Ishiya, Lord of Inaba. *Res.* Kurokawa, Lord of Bichu. *App.* and *Res.* Ogasawara, Lord of Nagato. *App.* and *Res.* Oguri, Lord of Bingo.	

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
BUNKIN.	II. 1862, Jan. 30.		*App.* and *Res.* Inouye, Lord of Shinano. *App.* Asano, Lord of Bizen. *App.* Sakaki, Lord of Hida.	
	III. 1863, Feb. 18.		*Res.* Asano, Lord of Bizen. *Res.* Sasaki, Lord of Hida. *App.* Abe, Lord of Echizen.	
GENJI.	I. 1864, Feb. 8.		*Res.* Abe, Lord of Echizen. *App.* and *Res.* Suzuki, Lord of Suruga. *App.* and *Res.* Matsudaira, Lord of Awa. *App.* and *Res.* Arima, Lord of Idzumo. *App.* Ikeda, Lord of Harima. *App.* Negishi, Lord of Hizen.	
KEIWO.	I. 1865, Jan. 27.		*Res.* Negishi, Lord of Hizen. *App.* Yamaguchi, Lord of Suruga.	
	II. 1866, Feb. 15.		*Res.* Ikeda, Lord of Harima. *Res.* Yamaguchi, Lord of Suruga. *App.* and *Res.* Inouye, Lord of Shinano.	

Period.	Year.	Temple Magistrates.	Town Magistrates.	Finance Magistrates.
Keiwo.	II. 1866, Feb. 15.		*App.* and *Res.* Arima, Lord of Awa. *App* Komai, Lord of Sagami.	
	III. 1867, Feb. 5.		*App.* Koide, Lord of Yamato. *App.* Asahina, Lord of Kai. *App.* Sugiura Busaburo.	
	IV. 1868, Jan. 25.		*Res.* Komai, Lord of Sagami. *Res.* Koide, Lord of Yamato. *Res.* Asahina, Lord of Kai. *App.* and *Res.* Kurokawa, Lord of Omi. *Res.* Sugiura Busaburo, *App.* and *Res.* Sugiura, Lord of Echu. *App.* and *Res.* Sakuma Bangoro, *App.* and *Res.* Ishikawa, Lord of Kawachi.	

MATERIALS FOR THE STUDY

OF

PRIVATE LAW IN OLD JAPAN.

PART II.

CONTRACT: CIVIL CUSTOMS.

Curtis -

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CHAPTER I.

CONTRACT-INSTRUMENTS.

In general, in the case of instruments embodying a contract of pledge,[1] sale,[2] or conveyance[3] of lands[4] or houses,[5] the relations and companies[6] of the parties affix their counter-seals,[7] and the local officials add a public attestation by a seal.[8] If a dispute arises over an instrument not bearing the official attestation, no suit thereon will be entertained. But ordinary instruments of contract other than the above are not subject to any official regulation, and the practice varies widely in different regions. Special variations are as follows.

KINAI. In Yamashiro *kuni*, Otagi and Kadono *kori*, the attestation of an official seal is required for an instrument of pledge of realty. In towns the borrower usually creates a lien[9] by placing the title-deeds[10] in the hands of the creditor, so that the official seal is not called for. In Kuse *kori*, the official seal is not used for pledges of realty; but the attesting-seal[11] of the companies serves as public attestation.

TOKAIDO. In Mikawa *kuni*, Atsumi *kori*, the seal of the ward or village headman[12] or the company-chief[13] is required for an instrument of sale or hypothec[14] of houses

1. *Shichi-ire.* 2. *Baibai.* 3. *Yuzuri-watashi* (grant-transfer). 4. *Tochi.* 5. *Kaoku.* 6. *Kumi-ai* (the same as *kumi*). These were the 5-men-companies, into which every ward and village was divided. See Introduction. 7. *Ren-in.* 8. *Oku-in.* 9. *Teitō.* 10. *Koken.* 11. *Shō-in.* 12. *Shoya.* 13. *Kumi-gashira.* 14. *Kakiire-shichi.*

or of residence-land. If the headman chooses to affix his seal to a second hypothec [1] of the same piece of land, and the second creditor suffers a loss, there is an obligation to make good the loss, and this obligation the whole village or ward shares.[2]

TOSANDO. In Omi *kuni*, Shiga *kori*, in case of a pledge of cultivated land, the village officers make a public attestation by affixing a seal to the instrument and attaching a paper slip [3] at the proper place in the land-register.[4] In the case of town lands, it is the custom to pledge [5] the title deeds, so that the official seal is not required. In Inugami *kori*, the method of public attestation is the same for villages. In towns it is the custom to keep a register of house-pledges,[6] and a pasted slip [7] is placed over the name of the owner, so as to prevent a second mortgage.[8]

In Iwashiro *kuni*, Aidzu *kori*, in a mortgage of house-land in a town, the officials examine the document, and affix a slip [9] at the proper place in the house-register to prevent a second mortgage.[10] In a pledge of cultivated land, the public attestation is accomplished by an indorsement [11] by the officials.

In Rikuchu *kuni*, Iwate *kori*, in a mortgage of realty, the counter-seal [12] of the companies is affixed, and not the seal of the officials. To prevent a second mortgage the creditor goes to the officials and requests a mortgage-certificate.[13]

In Uzen *kuni*, Tagawa *kori*, in case of a pledge or sale of realty, the parties' companies, the head man,[14] and the ward or village officers affix a counter-seal [15] and the chief

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1. *Nijū-kakiire.* For terms relating to mortgages, etc., see the chapter thereon. 2. *Itchō-nai sōmochi.* 3. *Kake-gami.* 4. *Mizuchō.* 5. *Shichiire.* 6. *Iye-shichi-chō.* 7. *Hari-fuda.* 8. *Ten* (天). 9. *Tsuke-fuda.* 10. *Iye-chō.* 11. *Uragaki* (back-writing). 12. *Ka-in.* 13. *Shichi-ire no sagefuda.* 14. *Osa* or *Chōnin.* 15. *Re-nin.*

headman[1] then affixes his seal[2] permitting the transaction. In case of a hypothec, the only formality is the affixing of seals[3] by the relatives and by the village officials.

HOKKAIDO. In Toshima *kuni*, Kameda *kori*, no official attestation is made. The people are honest and frugal, and no such practice as twice mortgaging is known. In Tsugaru *kori*, a public attestation[4] is made, for a hypothec of land,[5] by the *nakushi*, an officer next in rank under the ward-elder,[6] and for a mortgage of a house, by the ward-representative,[7] an officer next in rank under the headman.[8]

HOKUROKUDO. In Echizen *kuni*, Tsuruga *kori*, in villages, in case of a hypothec of cultivated land, only the parties' relatives affix a counter-seal, because in this district insolvency is unknown [and no other safeguard is needed]. In a "sale voidable on return of price"[9] (this is the term applied [in villages] to what is virtually a pledge of land for an indefinite time, the land being redeemable even by the debtor's descendants upon payment of the principal), the headman[10] and the elder[11] affix seals, and in a sale or mortgage of house-land in a town, the headman.[12]

In Echigo *kuni*, Koshi *kori*, in a sale, pledge, or hypothec of village cultivated land, the seals of the bailiff,[13] company-chief, and inspector[14] are affixed, this act being termed "thrice-sealing." In a town public attestation is made, in a sale of house-land, by affixing the seals of the headman[15] and the elder, and in a hypothec or a pledge, by an indorsement of the ward-representative. In Kariha *kori*, in a hypothec or a pledge of cultivated land, the so-called "three officers,"[16]—the

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1. *O-joya*. 2. *Oku-in*. 3. *Cho-in*. 4. *Oku-shō*. 5. *Jisho*. 6. *Machi-toshiyori*. 7. *Machi-dai*. 8. *Nanushi*. 9. *Hommono* (original sum) *kayeshi* (return) *urigiri* (sale ended). 10. *Shoya*. 11. *Toshiyori* 12. *Kimoiri*. 13. *Kendan*. For these names of local officials, see Introduction. 14. *Yokome*. 15. *Shoya*. 16. *Sanyaku*.

headman,[1] the company-chief, and the farmers'-representative [2]—affix an official counter-seal. In a sale or a hypothec of house-land in a town, the relatives and the companies counter-seal, and a public attestation is made by the ward-elder and the chief-headman. The record of hypothecs is kept at the office of the ward-assembly,[3] and a commission[4] of varying amount is paid at the time of a transfer. Sometimes when the record is neglected, for the sake of evading the commission, a second mortgage[5] is effected.

NANKAIDO. In Kii *kuni*, Nakusa and Abe *kori*, when a sale of realty is effected, the seals of the parties,[6] their companies, and the ward-officials are required. The indorsing seal[7] of the feudal official follows, and the document is called a "perpetuity-instrument."[8] In a hypothec, the parties and their sureties[9] affix seals, the ward-officials make an official attestation, and the feudal official[10] adds an indorsing seal; the purpose being to prevent double mortgages.

In Iyo *kuni*, Uwa *kori*, in a pledge of cultivated land, the company-chief affixes an official seal; if the pledgee is from another village, the headman[11] seals. In a pledge of house-land in a town, the ward-officer[12] seals.

SAIKAIDO. In Buzen *kuni*, Kiku *kori*, in a sale or pledge of rice-field, upland, or forest-land, the headman, makes a public attestation by sealing. In mortgages of house-lands in towns the ward-elder does not affix his seal, but as the companies of the parties do, no trouble is experienced through double mortgaging. In Shimotsuke *kori*, when rice-field or upland is pledged, the surety counter-seals, the headman and company-chief then add their official seals, and

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1. *Shoya.* 2. *Hyakushō-dai.* 3. *Machi-gaisho.* 4. *Tesūryō.* 5. *Tenbai.* 6. *Honnin.* 7. *Ura-in.* 8. *Yeitai-shomon*, (*yeitai-baibai* —perpetual sale—being the general term for a transfer in fee simple). 9. *Uke-nin.* 10. *Kwan.* 11. *Shoya.* 12. *Machi-yoagrika.*

the debtor, going to the village office, affixes a divided-seal [1] at the proper place in the record-book [2] of pledges. Then the parties respectively deliver [3] and receive [4] the price. When house-land in towns is sold or pledged, the company-chief counter-seals, and the ward-elder affixes an indorsing-seal on the instrument and a divided-seal in the land-register.[5]

In Hizen *kuni*, Takaki *kori*, in a pledge or conveyance [6] of cultivated land, the headman affixes his official seal. When house-land in towns is sold or pledged, the ward-elder does not seal, but in a sale the parties transfer and receive the price before the eyes of the ward-elder, and in case of a pledge, a note [7] is made in the land-register.[8]

In Osumi *kuni*, Sō *kori*, in sales of newly-reclaimed land or town-land,[9] the relatives and companies of the parties counter-seal, and the sureties [10] and witnesses [11] add a warranty-seal;[12] even in case of a pledge, only the above seals are used, so that double mortgaging sometimes occurs.

In Tsushima *kuni*, Shimoagata *kori*, the sureties and witnesses counter-seal, in case of sales or pledges of land,[13] and no official seal is affixed; if a second mortgage [14] occurs, a suitable punishment is inflicted by the feudal official.

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1. *Wari-han* (by stamping two documents at once, so that each receives half of the impression,—in this case presumably by stamping the mortgage instrument and the book). 2. *Hikaye-cho.* 3. *Watasu.* 4. *Uketori.* 5. *Mizu-cho.* 6. *Yudzuri-watashi.* 7. *Katagaki.* 8. *Kenchi-cho.* 9. *Machi Jimen.* 10. *Shoko-nin.* 11. *Ukeoi-nin.* 12. *Uke-in.* 13. *Jisho.* 14. *Ten-bai.*

CHAPTER II.

WITNESS AND SURETY.

As a rule the persons who act as witnesses and sureties merely are present at the transaction and do not assume any obligation to stand in the debtor's place and pay the creditor in case of a default. Special variations are as follows.

KINAI. In Yamashiro *kuni*, Otagi and Kadono *kori*, the term "witness" is used for personal suretyship, and "surety" for property suretyship.

In Settsu *kuni*, Yabe *kori*, it is an old custom that the witness shall only bear witness[1] to the transaction, and the surety shall make good[2] any deficiency[3] of payment on the part of the principal.[4]

TOKAIDO. In Kai *kuni*, Yamanashi *kori*, it rarely happens that an agent[5] is selected outside of the circle of one's relatives and company. In important transactions, the parties exchange the instruments of contract and report the matter to the headman.[6] Less important matters are usually transacted orally and are not reported. The function of surety is usually undertaken by some one among the neighbors, company, or relatives.

In Sagami *kuni*, Ashigara *kori*, a witness or a surety must be selected from among one's company. The duty of

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1. *Shomei suru.* 2. *Bensho.* 3. *Fusoku no bun.* 4. *Honnin.* 5. *Myo* (name)-*dai* (substitute)-*nin* (person). 6. *Nanushi.*

making good a default of the principal falls primarily on his relatives, and, if they fail to do so, then sometimes it extends to witnesses or sureties.

In Shimotsuke *kuni*, Yūki *kori*, those who are described[1] as sureties must make good a default of the principal.

TOSANDO. In Omi *kuni*, Shiga *kori*, whether a duty to make good on default exists or not depends on the terms[2] of the instrument. In Inugami *kori*, the witness merely bears testimony to the transaction, while the surety has the duty of making good the principal's default.

In Shinano *kuni*, Takai *kori*, no one can be held responsible unless he has himself affixed his seal;[3] so that it is forbidden to deposit[4] the seal with the headman[5] or company-chief, even for purposes of public business.

In Saku *kori*, one must keep possession of his seal,[6] without ever allowing it to go out of his hands. In spite of inconvenience to himself, he must not deliver it to any person [as agent] except parents, son, or brother. If he changes[7] his seal, he must immediately record the new one in the book of seals[8] at the local office.

In Iwashiro *kuni*, Aidzu *kori*, the witness or surety is called "sealer",[9] and not only bears witness to the transaction, but also makes good[10] a default[11] of the principal.

In Rikuzen *kuni*, Miyagi *kori*, there has from early times been no distinction between witness and surety, and such persons, where the transaction was a money loan, make good[12] a default, and, where they were sureties for personal service,[13] are responsible for its performance. In

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1. *Katagaki* (shoulder-note); the capacities which a person holds—offices, degrees of honor, etc.,—are written a little above and to the right of the name. It may be said of a person filling many honorable positions that he has a good *katagaki*. But the meaning "head-note" is also current. 2. *Mei-bun*. 3. *Chō-in*. 4. *Watashi-oku*. 5. *Nanushi*. 6. *In-gyō*. 7. *Kai-in*. 8. *In-kan-cho*. 9. *Ka-han-nin*. 10. *Daishō*. 11. *Hen-ben*. 12. *Ben-sai*. 13. *Hito-uke*.

Tōda *kori*, persons under 15 or above 60 years customarily not made agents.[1] An agency is word of mouth[2] and is not reported to the headm feudal official. In Ojika *kori*, persons under 15 or and persons who have incurred a punishment gre banishment[4] are not appointed sureties.

In Uzen *kuni*, Okitama *kori*, the surety for a loan, ever since early times, is not regarded as indemnify the creditor, even though the debtor's d flight hinders the creditor from getting satisfacti Tagawa *kori*, the term "witness"[5] in the instr implies merely that the person is to bear testimony, even if the debtor delays payment, the witness does particularly concern himself. But a description as "sear or "surety" implies a duty to make good a default. Ugo *kuni*, Akita *kori*, the surety for a money loan, when principal defaults in payment,[6] has a duty to undertake[7] make it good, even though no express promise to mak good has been made. When a surety has guarante a money loan[8] and at maturity the principal cannot pay and the creditor agrees to prolong the term of payment, the surety is not regarded as bound to make good a default, inasmuch as the prolongation of the period was a private arrangement[9] of debtor and creditor alone, and was in excess of the period originally guaranteed.[10]

Hokurokudo. In Echū *kuni*, Nei *kori*, the duty of the witness is to testify to the transaction, while the surety, in case the principal dies or absconds, has the duty of undertaking the performance of the agreement and making good the default.

In Echigo *kuni*, Kambara *kori*, the duties of an agent,

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1. *Myo-dainin.* 2. *Kōjō.* 3. *Kimoiri.* 4. *Tsuihō.* 5. *Shōnin.* 6. *Hensai.* 7. *Hiki-ukeru.* 8. *Kinsu-taishaku.* 9. *Shidan.* 10. *Ukeai nenki.*

surety, or witness end with the term of the original agreement. If such a one dies before its expiration, his obligation extends to his successor.

In Sado *kuni*, Sawada *kori*, the term used is "relation-surety,"[1] and, although there is usually a provision[2] in the instrument that the surety shall make good a default, in fact no one ever fulfills this obligation, the proverb running "the surety does not give money."[3]

SANINDO. In Tamba *kuni*, Kuwata *kori*, the surety is bound to make good a default.

In Tango *kuni*, Kasa *kori*, the term "surety" alone, and not "witness," is used. But the so-called surety merely is present at[4] the transaction and does not make good a default. In Yosa *kori*, there is no term "witness"; but, although the instruments declare the surety to be responsible, no one ever fulfills the obligation.

In Inaba *kuni*, Omi *kori*, the witness testifies[5] to the transaction, and the surety is bound to make good a default[6] of the principal.

In Idzumo *kuni*, Shimane *kori*, the surety in a loan of money or rice[7] or any other contract is bound, in case the principal defaults, to undertake performance and to repay[8] principal[9] and interest.[9]

SANYODO. In Harima *kuni*, Sayo *kori*, a witness merely testifies to the contract. A surety is liable for the principal's default, whether or not it is specially so agreed in the instruments.

NANKAIDO. In Sanuki *kuni*, Kagawa *kori*, the rule is as in the previous paragraph.

SAIKAIDO. In Buzen *kuni*, Kiku *kori*, the term "surety" is used, but no instance exists of a surety's making good a default, the proverb running "a surety does not repay money."[10]

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1. *Shinrui-uke.* 2. *Meibun.* 3. *Ukenin zeni dasazu.* 4. *Shūsen.* 5. *Shomei.* 6. *Furachi.* 7. *Kinkoku taishaku.* 8. *Shōkyaku.* 9. *Gwan-ri.* 10. *Ukenin kane wo tsugunawadzu.*

In Hyuga *kuni*, Miyazaki and Koyu *kori*, the term "witness" is not used. The surety is by custom liable to pay in case of default, but no one ever does so.

In Osumi *kuni*, Sō *kori*, the witness testifies to the transaction and the surety makes good a default.

In Satsuma *kuni*, Kagoshima *kori*, the witness and the surety invariably fulfill the duties of suretyship,[1] even though they have not sealed the instrument.

1. *Hoshō.*

CHAPTER III.

SALE.[1]

There is in villages a prohibition against the perpetual-sale[2] of cultivated-land,[3] so that the practice is for the transaction to take the form of a pledge irredeemable after 10 years[4] or of a pedigree-transfer,[5] the seller receiving the price and transferring[6] the property-right.[7] The instrument is counter-sealed by the seller's relatives and company, and the local officials affix an official seal and change the names

1. *Baibai.* In this chapter the terms *dempata* (rice field and up-land) and *kōchi* (cultivated land) are used as equivalents. As they are practically so in most cases (*den* or *ta* applying to wet-land, and *hata* to all kinds of cultivation carried on in dry or up-land, and the two together comprehending all the cultivated land of a village), the term "cultivated land" will here be used throughout, to represent the above terms, unless for some reason the literal rendering is preferable. It is also to be noted that the customs recorded of villages are usually concerned with cultivated land, while those recorded of towns concern houses or residence-land. This is because in the towns the inhabitants were practically all merchants, in villages practically all farmers. Transfers of house-land in villages appear, but not frequently. On the whole, what is said of cultivated land may usually be understood as a rural custom; what is said of house-land, as a burgensic custom.

2. *Yeitai-baibai* (that is, transfer in fee simple). 3. *Kōchi.* 4. *Junen-ki shichi-chi nagare.* 5. *Yuisho* (origin, root, stock; hence pedigree, family-ancestry)-*yuzuri-watashi* (transfer). 6. *Utsusu.* 7. *Shoyūken.*

in the land-register. In sales of town-lands the parties, after a consultation,[1] draw up the instrument, have it counter-sealed by the seller's relatives and company, and report the transaction at the ward office; the price is then given and received at the office, an official seal affixed to the instrument, and the names changed in the land-register. Special variations are as follows.

KINAI. In Yamashiro *kuni*, Otagi and Kadono *kori*, in sales of town-land, the parties agree upon their sureties, draw up the instrument, obtain the counter-seal of the ward-representative,[2] repair to the ward office, procure the official seal of inspection,[3] and transfer the property right. A fee of one-twentieth of the price is paid [by the buyer], and is applied to the ward expenses.

In Yamato *kuni*, Soyegami *kori*, in sales of residence land in towns, the parties, after settling the price,[4] report their intention to the officials of their respective wards. Then the elder of the buyer's ward communicates with the elder of the seller's ward, stating that an agreement[5] has been entered into between A and B in regard to the purchase and sale of certain residence-land, and asking that information be returned as to whether any opposition[6] to the transaction exists among the residents of the seller's ward. The elder of the latter ward then summons all the householders,[7] that is, heads of families,[8] states to them the contemplated transfer, and asks if there is any opposition. If none is offered, an answer to that effect is returned. By correspondence between the elders of the buyer's and the seller's wards the date of the transcription[9] is fixed, and on that day it is effected and the parties report

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1. *Kyogi*. 2. *Machidai*. 3. *Ken-in*. 4. *Nedan*. 5. *Shidan*. 6. *Sashi-tsukaye*. 7. *Iye-mochi*. 8. *Koshu*. 9. *Chō* (book, record)-*kiri* (cut, erase). It is possible that *kiri* has here the sense of "divide," "apportion," pointing to the idea that the land was once apportioned among the inhabitants. See Kaga *kuni*, Ishikawa *kori*, *infra*.

the transaction to the feudal official.[1] When no descriptive title-deeds[2] exist of the plot to be sold, the parties report the fact to the chief elder[3] and the ward-representative; all parties then go to the plot in question, and in the presence[4] of the neighbors on each side[5] or of the people of the nearest ward not separated by water,[6] the officials and the proprietor[7] rope off[8] the plot, and ascertain its dimensions in *ken*,[9] as well as its boundary-lines[10] and its "water-escape"[11] (a term signifying "drain").[12] Finally, if the area thus ascertained does not differ from that stated in the instrument, both parties counter-seal the instrument, and writing with it a certificate of guaranty,[13] send it to the chief elder at the time appointed for the transcription of names. The elder, accepting the certificate (which guarantees that no objections exist), indorses[14] and seals[15] the petition[16] asking the preparation of a new title-deed, as well as the title-deed itself, and forwards the documents to the magistrate's office.[17] The clerks[18] on the same day order the new title-deed to be sealed, and it is then handed[19] to the elder. The latter carries it back immediately, has the buyer deliver[20] to him the price at the ward-assembly office,[21] hands the price to the seller, and, after both parties express a final assent, gives the title-deed to the buyer.

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1. This term is used for the indefinite expressions (*kwan*, etc.) of the original, indicating the official directly representing the feudal lord. 2. *Ken-mon.* 3. *So-toshiyori.* 4. *Tachiai.* 5. *Ryo-tonari* (one family on either side). 6. *Jichidzuki tonari machi.* 7. *Shoyu-nushi.* 8. *Nawa-biki.* The measuring was done with a rope-line. 9. A linear measure of about 6 feet. 10. *Sakai-me.* 11 *Mizu-hiki* (water-draw-off). 12. *Akusui-ochi* (filthy-water-escape). 13. *Ukeai-issatsu* (a certificate that the result of the survey is not objected to by either). 14. *Uragaki.* 15. *Cho-in.* 16. *Gwan-sho.* 17. *Bugyosho.* 18. *Yoriki.* 19. *Sage-watashi* (lit., handed down, a mode of speech appropriate to the dignity of the feudal officials). 20. *Sashi-dasu* (hand up). 21. *Kwai-sho.*

In Kawachi *kuni*, Kawachi *kori*, when a house is sold in a village of the Shogunate dominions (but not of a daimiate), the sale must take place through the medium of a dealer in furniture.[1] Even on the instrument of transfer appear the name and seal of the dealer. Where the price is 100 *ryō* or less, the dealer customarily receives 5 *ryō*. In Wakaye *kori*, sales of cultivated land along a river or near a spring are held usually by auction.[2] The people of the region call this "peddling,"[3] and the seller delivers what they call a "record of *seto*,"[4] stating the name[5] of the plot, the assessed production,[6] the amount of tax,[7] the quality of the soil, and the rent.[8] This *seto* record (せと書), which we have written in the syllabic writing, ought perhaps to be written with the characters 畝 *se*[9] and 斗 *to*.[10]

In Idzumi *kuni*, Otori *kori*, in towns, when a house is to be sold, and a person living in another block[11] offers a fair price, the seller must first give notice to all the members of his own block; and if one of them is willing to buy at the price offered, the sale must be made to him.

In Settsu *kuni*, Nishinari *kori*, when land[12] or houses[13] are sold, notice is given to all members of the block,[14] the date of the sale publicly announced, and earnest-money[15] bespoken, usually amounting to $\frac{1}{10}$ of the price. When the bargain is struck, notice must be given to the ward-officers, and all regulations[16] and town-customs[17] must be conformed to. A time for delivery is fixed upon and earnest-money given. But before this and as soon as a buyer is found, the

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1. *Doguya*. 2. *Seri-uri*. 3. *Furi-uri*. 4. *Seto-gaki*. 5. *Azana*. This was a name given to a plot of land in old times by the reclaimer. See Simmons, "Notes, etc," p. 155. 6. *Taka*. 7. *Koso*. 8. *Toku-mai*. 9. One-tenth of a *tan*, or .025 acre. 10. One-tenth of a *koku*, or about 2 pecks. The document would thus be a "record of area and production." 11. *Chō*. 12. *Jisho*. 13. *Tate-ya*. 14. *Chō*. 15. *Tetsuke* (hand-touch)-*kin* (money). The idea is probably that of the preliminary touch at the beginning of an undertaking. 16. *Moshiawase-kisoku*. 17. *Machi-hō*.

seller must ask whether the ward-members have any objection to the buyer, and if not, the transaction proceeds. If before it is concluded some one of the ward-members appears who offers a higher price than the first person, he obtains the property. Where sales are made by wholesale[1] or commission[2] houses, the price paid is the ruling price at time of delivery, whether or not an interval occurs between the date of the bargain and the date of the delivery. The risk of the thing's not coming to hand to the seller is on the buyer; so that, if it is lost by shipwreck, the seller is not responsible. But if, for example, a thing is sold by a merchant in Yedo to a merchant in Osaka, and it is lost in transit, the loss is divided according to the distance the ship has gone. If, for example, it was wrecked off Toba Bay in Shima province, the Osaka merchant is responsible; if off Shimoda in Idzu province, the Yedo merchant.[3] Similar rules are fixed for other voyages. If, for example, it is a merchant of Kyushū or Matsumaye that ships the goods to Osaka and they are lost, the shipper bears the loss, not the Osaka merchant; and it results from this that the Osaka merchants often have credits against the other merchants based on transactions of this sort. Where purchases are frequent and a running account exists, an accounting is made every 60 days; and an agreement to account every 65 or every 100 days, for example, would be void. This rule applies to the necessaries of life. Payment may be refused where the realty or personalty is of a different nature from that contracted for or where the quantity is different. In such a case, however, the earnest-money is always forfeited by the vendee.

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1. *Toiya*. 2. *Nakagai*. 3. The difference between the two cases is apparently this. In the former, A orders of B in the same town some merchandise not in stock; B has some on the way, but it is lost before coming to hand; B is exonerated and, probably, A must pay. In the latter, B in one town sells to A in another, engaging to deliver; if on the way the goods are lost, the loss falls according to the rule given.

In Yabe *kori*, in villages, the sale of cultivated and of residence land is not permitted, and a transfer[1] of such property is made under the name of a grant,[2] the receipt of a sum of money in token of gratitude[3] being noted by the seller on the instrument. But as this sum corresponds to the full value of the land, the transaction is really a sale.[4] In towns the transfer of houses[5] and lands[6] is accomplished by means of an ordinary sale.

TOKAIDO. In Ise *kuni*, Ano *kori*, the law permits the sale of house-land but not of cultivated land or forest-land.[7] A sale is made under the name of a "sale with return of purchase-price after ten years,"[8] and the name of the proprietor[9] is changed in the land-register;[10] so that the seller cannot for ten years buy back[11] the property, but at the end of that time he may, upon paying the original price received,—no matter how many years pass by before he does so. The term[12] of years in sales of forest land differs from that in case of cultivated land, the usual term being 30 or 50 years, because in the latter case there is a yearly profit,[13] while the cutting of forest-timber[14] is prohibited until after a certain period of growth. The sale of houses or lands in towns is without restrictions. In Wataraye *kori*, in sales of cultivated or forest land, the only proceeding is to report[15] the transaction to the village or ward office; for sales of houses no report is necessary. The form of the instrument of sale is determined by the arrangement of the parties and the officials do not concern themselves about it.

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1. *Utsusu*. 2. *Yuzuri* (give)-*watashi* (transfer). *Yuzuri* involves the idea of transfer or relinquishment for reasons other than mere pecuniary gain, e. g. family affection, or retirement from business. 3. *Rei-kin*. 4. *Uri-watashi*. 5. *Kaoku*. 6. *Jishō*. 7. *San* (mountain)-*rin* (forest),—as distinguished from the bamboo groves. 8. *Jikka. nen moto-kin kaeshi uri-watashi*. 9. *Mochi-nushi*. 10. *Na-yosei-cho*. 11. *Kai-modoshi*. 12. *Nenki*. 13. *Saku-toku*. 14. *Rinboku*. 15. *Todokeru*.

In Shima *kuni*, Toshi *kori*, every piece of rice-field, upland, and forest-land has its title-deed,[1] which they call "deed-of-hand,"[2] and if one is lost by flood, fire, or theft, the owner reports to the local officials, and procures a copy of the entry in the land-register,[3] and this becomes his title-deed, which it is the invariable custom to hand over at the time of a sale. As to [these] lands,[4] the law nominally forbids a perpetual sale, but if in an instrument entitled "sale of land" there is no express stipulation[5] for buying back, the transaction becomes in fact a perpetual sale, and upon the oral[6] request of buyer and seller the headman changes the name of the proprietor in the land-register[3] and the transfer is complete. The relations and company customarily sign the instrument of sale. In sales of residence-land[7] the proceedings are as above, except that there are no title-deeds. It is an old custom, when the headman[8] makes the annual inspection of tax-accounts[9] in the 10th month, to send a servant around through the whole ward or village, crying, "Are there any changes[10] of proprietors of rice-field or upland? If so, report them."

In Owari *kuni*, Aichi *kori*, in transfers of cultivated or residence land in villages, the only formal requirement is the official seal of the headman, and no report to the feudal official is necessary. But in the case of newly reclaimed land[11] the inspection-seal[12] of the feudal official is required. In the transfer of houses or lands in towns, it is the custom for the officers of the place to affix an official seal and for the parties to report to the

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1. *Kō-shōmon*. 2. *Tegata*. 3. *Mizu-cho*. 4. *Jishō*. 5. *Meibun*. 6. *Kōjō*. 7. *Iye* (house)-*yashiki* (lot)-*chi* (land). 8. *Shōya*. 9. *Kōsō*. 10. *De-iri* (going out and coming in). There are some difficulties in the foregoing passage, but the above seems the most probable rendering. It is to be supposed that the transfer of the land first named required both delivery of title-deed and alteration of the register. Furthermore, no prohibition existed as to sales of residence-land. 11. *Shinden*. 12. *Ken-in*.

feudal official and request an alteration in the house-register.[1] When the instrument of sale stipulates that the buyer shall redeliver the property if within a certain number of years the seller repays the original price, it is called a "return-instrument."[2] In such a case the seller has the right to buy back; otherwise the sale is in no event voidable[3] by him.

In Mikawa *kuni*, Nukata *kori*, in sales of houses or lands in towns, the seals of the seller's relations and company and the official seal of the headman[4] are required for the instrument of sale, and when the headman's seal has been affixed, the name-entry[5] in the register[6] are changed. In villages, as perpetual sales of cultivated and residence land are forbidden, a sale is effected by a transfer acompanied by a stipulation to return on demand at any time within a fixed period of years; this is called "sale with return if I have money within the term."[7] The seals of the seller's relations and company are required, as well as the official seal of the headman, and the name of the proprietor is changed in the land-register. There is no regular period of years in use, this being a matter of mutual arrangement. If at the expiration of the period the seller is unable to buy back, the instrument is properly altered and an agreement for indefinite renewal[8] is made. When no limit of time for buying back is fixed, and the repurchase is stipulated for whenever the seller obtains enough money, the seller does not lose his right even though many tens of years elapse before he claims it. But the lapse of time is not entirely without limits, as by custom the land becomes forfeited[9] in 61 years. There is also a kind of sale called "sale of patrimony,"[10] usually made by a seller who wishes to procure a further advance within the period of redemption mentioned above. It is in reality a perpetual sale, the seller transfering an inheritance

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1. *Iye-nami-cho.* 2. *Modori-shomon.* 3. *Hai-ki suru.* 4. *Shōya.* 5. *Na-yosei.* 6. *Chōbo.* 7. *Kane-ari nenki uriwa.* 8. *Toshi-tsugu.* 9. *Ryu* (adrift, gone)-*chi* (land). 10. *Mei* (name, family)-*seki* (residue).

received from many generations.[1] This transaction cannot be made public, so that the document bears the seal[2] of the [seller's] relations and company only and no official seal of the headman; still the headman is usually privy to it.

In Suruga *kuni*, Abe and Udo *kori*, if the buyer repudiates[3] a contract of sale, he loses the earnest money; this they call "losing the earnest." If the seller repudiates, he must pay back double the amount of the earnest money; this they call "returning double the earnest."[4] When a "secret-ticket sale"[5] is to occur, and after a number of persons have assembled the seller refuses to transfer because the bids,[6] are lower than he expected, it is customary for him to give a compensatory fee[7] of varying size; [or to avoid this] he may put beforehand in the receptacle for bids a card called "limit card,"[8] containing his own appraisal of the property. In Shida and Mashidzu *kori*, the buyer pays down a sum of money as evidence of the contract of sale; this sum is called "clinch-money."[9] If the buyer repudiates, he loses this; if the seller, he pays back double its amount.

In Kai *kuni*, Yamanashi *kori*, when cultivated, mountain or residence land, is sold, the buyer, seller, and surety meet and agree, making out a document of sale bearing their seals. This they hand to the village officers, who inspect the property and compare the entry in the land-register;[10] if they find that the vendor has title to that which he attempts to convey, the headman[11] officially indorses

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1. *Ruisei denrai.* 2. *Ka-in.* 3. *Haiki.* 4. *Tetsuke-bai kayeshi.* 5. *Nyu-satsu-barai*, an auction with sealed bids. 6. *Raku* (drop)-*satsu* (ticket). 7. *Nitto-kin* (lit., laborer's wages). 8. *Tome-fuda.* 9. *Sashi-kin. Sashi* is used idiomatically in numberless phrases; the root-meaning is "pierce" or "thrust," but the ideas of catching a bird, joining the parts of a box, bolting a door and others are also expressed by the aid of this word, and in the present connection the word "clinch" seems nearly to correspond to it. But see *infra*, Shinano *kuni*, where *sashi-kwaye-kin* is used, of which this may be an abbreviation. 10. *Taka-chō.* 11. *Nanushi.*

tions and company and officially sealed by the local officials. It is customary for the buyer to give an entertainment to all concerned, and to borrow for the purpose a room in the headman's [1] house, for which he pays no fee.

In Shimosa *kuni*, Imba *kori*, perpetual sales of cultivated land being prohibited, the property-right is transferred by a "happen-to-have" sale. This is a contract with or without limits of time, by which the property is sold and the buyer stipulates to restore it whenever the seller is able to pay the original price, the name being meanwhile changed in the land-register.[2] In sales of town-land, the relatives counterseal and the local officials seal the instrument, the permission of the feudal official having been obtained. The buyer pays customarily one-twentieth of the price to be applied towards the salary [3] of the headman [1] and the company-chief.

In Hitachi *kuni*, Ibaraki *kori*, sales for a term of years,[4] as well as perpetual sales, are absolutely prohibited, unless official consent is obtained. The would-be seller petitions the local officials to allow a sale, alleging a need of money to pay his arrears of taxes. The officials conduct the tranfer, at first allowing a grant for a limited term only; and at its expiration, if necessary, they allow the transfer to be made perpetual. Since the reforms of the Tempo period (1830–1844), the free sale of one-fifth of one's entire property [5] is allowed, but a transfer by any person owning land assessed for less than 3 *koku* is forbidden. In sales of town-land, the transaction is left to mutual arrangement, but it is customary for the parties and witnesses to appear at the feudal office and have the parties' names transcribed in the house-register.[6]

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1. *Nanushi*. 2. *Mizu-cho*. 3. *Kyu-ryo*. 4. *Nenkiuri*. 5. *Mochi-taka*. 6. *Maguchi* (lit., the frontage of a house)-*cho* (book); one of the town taxes was levied according to the frontage of houses.

money; and he may do so at any time, there being usually no fixed period;[1] but the name in the land-register is changed. When the estate[2] of a family is subjected to bankruptcy, or forest-timber which is the common property of a village is to be sold, the sale is held by auction,[3] since the sellers wish to see the selling-price enhanced, if only a little. In case of a bankruptcy auction, it is customary for the creditors to be present.

In Musashi *kuni*, Saitama *kori*, as perpetual sales of cultivated land are prohibited, it is customary to transfer the right of property in them by pedigree-grant;[4] and at the end is appended a clause acknowledging the receipt of the price,[5] which is termed "compliment-money."[6] In sales of town-land, both parties file instruments bearing the counter-seals of their companies, and when the local official has affixed his seal, the right of property is transferred. In Iruma *kori*, the perpetual sale of cultivated land being forbidden, the right of property is transferred by means of a mortgage with forfeiture after fixed term.[7] In sales of town-land, petitions are first filed by both parties, the purchase-money is then handed over at the local office, the boundaries[8] are examined in the presence of feudal officials, the ward-elder puts his official seal on the instrument, and the transfer is complete. The buyer customarily pays a sum equal to about 6 per cent. of the price[9] as "headman's feast-money."[10]

In Awa *kuni*, Awa and Higuri *kori*, sales of land being prohibited, the seller, in such transactions, receives a gratitude-fee[11] and the property right is transferred under the name of a grant.[12] The instrument is counter-sealed by rela-

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1. *Nengen.* 2. *Shindai.* 3. *Teki* (competition)-*bai* (sale) or *seriuri.* The Chinese characters are the same for both. 4. *Yuisho-yuzuri.* 5. *Dai-kin.* 6. *Iwai-kin* (or celebration-money). 7. *Nenki shichi-chi nagare.* 8. *Keikai.* 9. *Kai-daka.* 10. *Nanushi furumai-ryo.* 11. *Rei-kin.* 12. *Yuzuri-watashi.*

In Shinano *kuni*, Saku *kori*, all land, except residence-land [in towns], was before the period Kwansei (1789-1801) sold by perpetual sale. But since that time[1] this has been forbidden, and sales may be made only by making and foreclosing a "mortgage. In sales of personalty, earnest money (called additional money"[2]) is paid down, a date of delivery is fixed, and a bill of sale given to the buyer. The seller, when the date arrives, may claim a delay of a few days. If the price agreed upon is a fair one compared with current rates, but the current price rises considerably before delivery, the seller must nevertheless deliver at the agreed price. If the buyer has received the article, and it is destroyed before the price is paid, he must nevertheless pay. If the article is bought in the morning at an agreed price, and the current prices decline considerably before evening, he must still accept and pay, losing the difference between the morning and evening prices. When the buyer of realty or personalty fails to take the property, he loses the bargain-money; when the seller fails to perform, he forfeits double the amount. Where the seller wishes to have the privilege of buying back[3] after several years, the document of sale contains a stipulation to that effect. In Sakai *kori*, cultivated land cannot be sold unless a petition is first made to the headman[4] of the village and his official indorsement is obtained. But residence-land may be sold merely after consultation with [the seller's] relatives and company. In case of residence-land, the seller pays one-tenth or one-twentieth of the price to the ward-assembly-office. This forms a "collected-fund"[5] which is used to relieve the distress of any ward-member and his family who may fall

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into distressed circumstances. In Mizuuchi *kori*, where there is to be a sale of something which belongs to several persons in common, secret-ticket auction is employed.

In Kodzuke *kuni*, Gumma *kori*, in sales of cultivated land, the document is sealed by the [seller's] relatives and by the headman,[1] and the names in the land-register[2] are changed, the feudal official not being concerned at all. There is a prohibition against sales of town-land, and it is the custom to make transfers (the permission of the feudal official being first obtained) under the name of "good-will grant."[3]

In Shimotsuke *kuni*, Kawachi *kori*, public sales[4] of cultivated land are not permitted, and transfers are effected under the name of "pledges forfeitable after a term".[5] Sometimes a contract is made by the buyer that the seller may take back[6] the land upon payment of the original price whenever he obtains enough money, no matter after how many years. In sales of town-lands, the ward-officers affix an indorsing seal to the document. The custom is that the buyer shall contribute to the local office a sum equal to one-tenth of the selling-price, as a fee;[7] so that usually the document recites a smaller sum than the real price paid.

In Iwaki *kuni*, Shirakawa *kori*, the perpetual sale of cultivated land is not allowed; and, although the law has been evaded by means of the forfeitable-pledge, until recent times the relation of the seller usually contrived, by redeeming before forfeiture, or otherwise, to preserve the land in the family. In the case of town-lands, there is a title-deed[8] for each piece of land, and the seller, at the time of a sale, merely adds the necessary words and delivers it to the

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1. *Nanushi*. 2. *Nayosei-cho*. 3. *Yoshimi-yuzuri*. 4. *Kōzen*. 5. *Nenki shichi-nagare*. 6. *Tori-modosu*. 7. *Tesūryo* (trouble-money). 8. *Uriwatashi-shomon* (lit., sale-deed).

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delivery",[1] the other "sale without delivery".[2] By the former, if the article is destroyed before it reaches the seller's hands, the buyer is responsible; and if the time of delivery and payment is agreed on and the buyer fails to accept and pay as agreed, he loses the earnest-money. So if A contracts to sell to B 200 bales of rice and the day of delivery and payment is fixed, the seller must deliver it on that day. If he fails to, he must restore double the earnest-money. In Toda *kori*, perpetual sale of cultivated or residence-land is prohibited. Cattle may not be sold without a tag,[3] which is the evidence of ownership; if this is not observed, the transaction is null, and both parties are punished as evil-doers.[4] This tag is known as "horse-number tag,"[5] and for each one a tax of 100 *mon* is collected. If A sells a horse to B, he has the official in his village substitute B's name on the tag. B then goes to the headman of his own village, and has the contents of the tag copied into a book called the "register of stables".[6] Other personalty may be sold without restriction.

In Rikuchû *kuni*, Isawa *kori*, in sales of real property, the parties first procure the assent of the local officials and wait until an order for land-partition[7] comes from the feudal official. A petition[8] is then filed,[9] the right of property transferred, and the names changed in the register. Before the partition-order can be made, the local officials must make an entry of the transaction and charge the buyer with taxes in kind[10] and labor-services.[11]

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1. *Todoke* (send)-*watashi* (transfer) 2. *I* (stand still)-*watashi* (transfer). Nothing is said as to the latter sort of sale. Presumably the buyer took delivery at the seller's house. 3. *Hanshi*. 4. *Do*. But the exact meaning of the word is hard to trace. 5. *Koma-kuchi hanshi*. 6. *Umaya-motocho*. 7. *Taka-wake*—that is, a setting-off of the parcel sold. 8. *Todoke-sho*. 9. *Sashidasu*. 10. *Nengu*. 11. *Shoyaku*.

In Uzen *kuni*, Tagawa *kori*, sales of house-land in towns are made after obtaining permission[1] of the feudal official. Perpetual sales of rice-field, upland and forest land are not permitted, and a sale is effected by means of an instrument purporting to be a pledge for a fixed term, a secret agreement[2] of sale being made in a subsidiary instrument.[3] The parties wait for the last year of the term and allow the land to become forfeited.[4] But when a piece of land owned and cultivated by a farmer from another village[5] is sold to the village in which it is situated, there is invariably an express stipulation for a perpetual privilege of re-purchase. In Okitama *kori*, when a perpetual sale of residence-land[6] is contemplated, the buyer and seller consult, and the former makes out a document reciting: "I buy this land from so-and-so, the price being so much, and I request that official indorsement be given." The seller then takes this document, and sends it, together with the deed of sale[7] which he is to give the buyer, to the bailiff.[8] The latter indorses them, and makes the following entry in the land-register:[9] "This land was sold by B to A on such a day of such a month in such a year," and cancels the name of the seller in the register, substituting that of the buyer. If this procedure is not employed, the buyer cannot subsequently bring suit to enforce his right, in case a third party claims the land. But the mere sale of one's residence-land does not involve the transfer of the seller's family-name,[10] unless special report is made to the headman and sanction received. Unless this sanction is given the seller is still bound to pay taxes on the house,[11] even though he thinks that his family-name has

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1. *Ninka.* 2. *Nai-yaku.* 3. *Soye-sho.* 4. *Ryu-chi.* 5. *Nyu-saku* or *iri-saku* (enter-cultivation), because the former village is entered by the owner from without its precincts. 6. *Yashiki-chi.* 7. *Uri-watashi-shosho.* 8. *Kendan.* 9. *Mizu-chō.* 10. *Ko-mei.* 11. *Ka-zei.*

been transferred and that he is no longer subject to taxes as a householder. But the perpetual-sale of residence-land is allowable only when the buyer is a member of the same village. Cultivated land may be sold for a period not longer than 10 years, and forest-land for 20 years. Where the seller is the one who made the offer,[1] and he breaks the contract, he restores double the earnest-money; where the buyer made the offer and breaks the contract, he loses the earnest-money. Where the seller of personalty wishes, some years afterwards, to buy it back, and the buyer agrees, the former must restore besides the price received, a sum equal to the earnest-money and any incidental loss. When residence-land is to be sold with the privilege of buying back, the buyer makes a document evidencing this and deposits it with the headman. The rules as to sales of residence-land by feudal retainers are peculiar. Such property is a gift from the lord, and so cannot be sold. But the same object is accomplished by a restoration of the land to the lord by its possessors, while the intending buyer petitions for it to be assigned to him, alleging that he possesses no residence-land. But this can be done only where the buyer is a retainer of the same lord, not where he is a commoner or a retainer of another lord. The sale of houses, however, by retainers is permitted, as they are supposed to have erected them. In Ugo *kuni*, Akita *kori*, in sales of [town] land, the seller gives to the buyer an instrument of sale sealed by the seller and a middleman,[2] and when the transaction is completed, notice must be given to the ward-representative,[3] that the name of the owner may be changed in the land-register;[4] the ward-representative notifies the headman,[5] who enters on the register by pasted slip the date and the name of the buyer. In the sale of a house only, a similar instrument is given to the buyer, but notice to the ward-representative

1. *Moshi-ide.* 2. *Nakadachi.* 3. *Machi-dai.* 4. *Mizu-cho.* 5. *Shoya.*

and the headman is not required. But when the buyer moves into the house, he observes the usual procedure [as to notifying a change of residence]. When [in villages] a perpetual sale is to be made of cultivated or forest land, the instrument must contain the seals of the seller and his surety[1] and the official indorsement of the headman,[2] except that in sales of forest land, the instrument need not specify the area[3] nor contain the headman's indorsement. Gold, silver, copper, and such valuable metals are not to be sold privately;[4] a petition to the local official[5] must be made. But such sales are without restriction where the metal is in the shape of a manufactured article. Sales of weapons, however, to men in other provinces[6] are prohibited. Horses may not be transferred by private sale.[7] Hence it is only through horse-dealers that sales of horses may be made, since they alone get for their horses the necessary tags;[8] these they receive from the feudal[9] office in return for the trade-tax[10] which they pay. Earnest-money is usually one-tenth of the price agreed on. The parties agree on a day for delivery and payment, and the seller usually takes the goods to the place of delivery. If before delivery they are destroyed, the seller bears the loss. When land is sold, the parties meet with their companies, their neighbors, and the ward-representative, at the site; the ward-representative compares the land to be sold with the entry in the land-register,[11] new stakes[12] are driven in at the four boundaries, and the land is handed over.[13] The expenses of the examination are paid by the seller, unless they specially agree to the contrary. In sales of land or houses, it is sometimes agreed that the seller, may buy back the property after a certain number of years, on pay-

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1. *Ukeai-nin.* 2. *Kimoiri.* 3. *Tambetsu.* 4. *Watakushi ni.* 5. *Kakari-yakusho.* 6. *Koku.* 7. *Sotai-baibai.* 8. *Kwansatsu.* 9. *Han.* 10. *Yei*-(carry on)-*gyo* (business)-*zei* (tax). 11. *Mizu-cho.* 12. *Sakai* (boundary)-*kui* stake). 13. *Uke* (receive)-*watashi* (deliver).

ment of the original price with interest. This is usually evidenced by a document.

HOKUROKUDO. In Wakasa *kuni*, Onifu *kori*, although open perpetual sales[1] of cultivated land are forbidden, the parties arrange such sales between themselves, and have the names changed in the land-register,[2] leaving the original entry therein untouched in other respects. In sales of residence-land in towns, the buyer receives the instrument from the seller, reports the transaction to the feudal official, and has the proper correction made in the land-register[3] at the local office.

In Echizen *kuni*, Asuha *kori*, sales of rice-field, upland, and forest-land are nominally forbidden, and the transaction takes the shape of a pledge for a fixed term. The instrument evidencing the transfer is called "principal deed," and is delivered to the lender with a "hand-ticket."[4] At the expiration of the term the seller receives an additional sum,[5] delivers a deed of quittance,[6] transfers the right of property and has the names changed in the land-register[7] at the local office. In sales of town-lands, both parties appear at the office of the town-magistrate,[8] contribute the one-hundredth part of the selling-price[9] as "thank-money",[10] and have the names changed in the land-register.[3] In Tsuruga *kori*, although perpetual sales of cultivated land are not permitted, it sometimes has happened in villages, since the period Hōreki (1751-1763), that persons effect complete sales between themselves, by means of a deed of perpetual-grant, the transaction being superintended by the local official alone, and not reported to the feudal official, and the names not being changed in the land-register.[11] In the tax-book of

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1. *Kozen-yeitai-baibai.* 2. *Nayosei-cho.* 3. *Mizu-cho.* 4. *Tefuda.* 5. *Mashi-kin.* 6. *Uri-kiri* (sell-finish, i. e. final release). 7. *Taka-cho.* 8. *Machi-bugyo.* 9. *Uri-daikin.* 10. *Myoga-kin* 11. *Nayosei-cho.*

farmers[1] annually presented to the feudal official, the entry is made that land of A's, (the original proprietor) assessed at so much, is under the control[2] of B, the new proprietor; and the feudal official does not make objection.

In Koshi *kori*, sales of cultivated land being prohibited, a transfer is effected as follows: The seller[3] seals and the headman,[4] company-chief, and inspector[5] counter-seal a document reciting, in substance, that he is unable himself to manage this part of his possessions,[6] that he offers it to the feudal lord, that the latter has graciously bestowed on him so many *ryo*[7] as benevolence[8]-money, which he has assuredly received, and that he will make no opposition if afterwards the control[9] be given to another person. On the back of the instrument is a memorandum-slip, containing the buyer's name; this the feudal official takes, and an indorsement of consent to the request of the grantor is made, with an order that the person named in the slip shall be given the control of the land. The instrument is sent

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1. *Komaye*-(small farmers)-*nengu* (tax in kind)-*cho*. *Komaye* in local documents is often used in contrast to *cho-byakusho* (chief farmers or landlords), and would in that case perhaps indicate the tenant class. But there seems to have been a flexibility in the use of these and similar terms, and in the present case it may designate the entire body of farmers. The *komaye* possessed their own houses, and gained a livelihood by cultivating patches of land hired here and there. Probably in some cases they formed the whole population of a village, and hence, as in the present case, the land-register would come to be called *komaye-cho*. Such a case would naturally happen where the land-owner lived at a distance, owning a large territory; hence *nengu*, strictly the feudal rice-tax, sometimes is applied (and perhaps here) to ordinary rent, the landlord occupying such a superior position as to bring the word *nengu* into use by analogy. 2. *Shihai*. 3. *Hon-nin* (principal party). 4. *Shoya*. 5. *Yokome*. 6. *Mochi-bun*. 7. The unit of coinage corresponding to the dollar. 8. *Te* (hand)-*ate* (touch), signifying derivatively, among other things, any kindness belowed by a superior on an inferior. 9. *Shin-tai* (lit. advancing and retreating).

back and the sale is completed. Land thus transferred is called "offered-up land."[1] In sales of houses and residence-land in towns, no petition to the feudal official is necessary; there is merely a change of the parties' names in the land-register[2] by the local officials. There is in this district no such thing as an auction, by either secret or oral bids, of land in connection with private transactions. The ordinary auction is used only at bankruptcy sales, and the secret-ticket auction only in case of confiscation[3] by the feudal lord of land[4] given to the headman[5] as salary.

In Kaga *kuni*, Ishikawa *kori*, the permission of the ward-assembly must be obtained for sales of houses and residence-land in towns. Cultivated land in villages may be sold, but only in the following mode. The seller makes out a document sealed by himself, a surety, and a witness, and gives it to the headman.[5] The latter sends it to the "new-lands superintendent,"[6] who indorses and returns it, the headman keeping it in his possession. The head of a family may not transfer his land until he reaches the age of 20. No man may sell all his realty; so, even though he becomes bankrupt, the creditors must leave him a piece of land assessed for 2 *shō*. This plot is called "nominal property."[7] In towns the house may be sold, though not directly to a non-merchant.[8] Such a one, if he wishes to buy directly, must pay an extra commission of 20 per cent of the price to the merchant [who would have been the middleman].[9] Horses and cattle may not be sold unless through the medium of horse-dealers.[10] New rice may not

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1. *Sashi-age denji.* 2. *Mizucho.* 3. *Kwan-botsu.* 4. *Kyu-chi.* 5. *Ri* (village)-*sei* (arbiter). 6. *Kai*-(newly open)-*saku* (cultivation)-*bugyo* (magistrate). 7. *Na* (name)-*taka* (assessed amount of property). 8. *Shirōtō* (white-person). This term was applied by those within a guild or class to those without, and means in general "outsider." 9. Compare *supra*, Kawachi *kuni*, Kawachi *kori*. 10. *Uma-shō*, *bakurō*.

be sold until the tax-rice has been paid, unless by permission of the headman.[1] These are regulations of the feudal office.[2] When vessels are sold, the parties exchange receipts,[3] and when an inspection is made by the official, to collect the ship-taxes, these documents are recorded. When anything like rice or wheat is sold, the price of which is constantly fluctuating, and a date is fixed for delivery, the following rule exists: if, for example, the whole price amounts to 100 *ryo*, and 20 *ryo* of earnest-money is paid, the remaining 80 *ryo* to be paid on delivery, the buyer may withdraw from the contract, if the current price for the whole amount falls below 50 *ryo* at time of delivery, though he forfeits the earnest-money. But if the total price at current rates rises to 150 *ryo*, the seller may withdraw, restoring 40 *ryo* to the buyer as penalty. There is a transaction called "sale by sample,"[4] in which the seller engages to sell an article of a certain class. He gives a sample to the buyer, and the latter pays earnest-money. If on delivery the quality of the goods given is not equal to that of the sample, the buyer may refuse to accept or may demand a reduction of the price. This is apparently not a very satisfactory transaction [as it offers opportunities to dishonest buyers], but in this region it is very frequent, though, to be sure, a failure to equal the sample is rare. Cultivated land is usually sold on condition that the seller may buy it back after 5 or 10 years; when the time arrives, the original price only, without interest, is paid, for the buyer has had the benefit of using the property. In Kawakita *kori*, cultivated land and residence-land may not be sold by area, but only by assessed production. This production-amount is called the "portion-production",[5] the owner is called "portion-person",[6] the buyer, "taking-

1. *Ri* (village)-*sei* (arbiter). 2. *Han*. 3. *Kenjo* (evidence-paper). 4. *Mihon-akinai*. 5. *Kiri-daka*. The exact sense of *kiri* here is, however, not entirely clear. See Yamato *kuni*, *supra*. 6. *Kiri-te*.

person,"[1] and the price, "gratitude-money."[2] When land is to be sold, the owner prepares a document sealed by himself, his surety, the buyer, the village officers, and those of the five nearest villages; this is presented to the headman of the district,[3] who compares the land with the register, and if all is correct, seals the instrument, and delivers it to the "new-land magistrate,"[4] who also seals it. In Nomi *kori*, when it is desired to sell residence-land [in towns], the owners notifies his company, and if no one of them desires to buy, then it may be sold to others. The seller prepares an instrument bearing the seals of himself, the buyer, the witness to each, and the company of each, and this is sent to the ward-elder, who returns it to the buyer, after indorsing it. Where a house, or an article made with money contributed by a number of persons, is to be sold, ordinary auction or secret-ticket sale is employed. Notice of the sale is given to the merchants interested, and they assemble for the purpose. In an ordinary auction each article is sold separately, but in the secret-ticket sale one bid is made for the entire property to be sold. In Yenuma *kori*, if the buyer refuses to receive property contracted for or asks for delay, he must pay interest on the price. Earnest-money is paid when the bargain is struck; and if the seller fails to deliver as agreed, he must restore twice the earnest-money. Where a stipulation for re-purchase at a given time has been made, this may be done on repayment merely of the original price received, provided it is done within three days of the time fixed; if later than that, interest must be added.

In Noto *kuni*, Hōshi *kori*, horses under 2 or 3 years of age may not be sold without special permission. In Suzu

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1. *Tori-te*. 2. *Rei* (gratitude)-*mai* (rice)-*dai* (price)-*kin* (money). 3. *To* (ten)-*mura* (villages). Apparently there had once been an officer over every 10 villages; but here the number is 5 only. 4. *Kaisaku-bugyo*.

kori, when a contract of sale is made, the agreement may be made that the goods may be sold to any one else who may offer a higher price before the time fixed for delivery. If by agreement the seller may within a certain number of days repurchase it from the buyer, and at the time appointep he fails to do so, the buyer is no longer bound to restore it. But such transactions give a one-sided advantage, and are not usual.

In Echū *kuni*, Imizu *kori*, sales of shares[1] in the wine-dealers, or other trade-guilds, or of cultivated or residence land are permitted only after petition to the feudal office. In Nei *kori*, sales of realty may not be made without indorsement of the local officials. In Tonami *kori*, when the title has passed to the buyer, the former owner cannot buy back the property, unless there has been an express agreement to that effect. In auction-sales, a regularly-licensed dealer in furniture is the manager.[2] Notice of the sale is given beforehand by him to other merchants. The person offering the highest price becomes the owner, and the manager of the sale receives a double commission[3] of 3 or 4 per cent of the price from both seller and buyer.

In Echigo *kuni*, Kambara *kori*, where residence-land [in towns] is to be sold, the seller comes to an agreement with the buyer, and the latter then gives a temporary instrument[4] to the former, also paying earnest-money. The seller then sends the petition of sale, with the title-deed, to the ward-representative. The latter changes the register in the ward-assembly-office, officially indorses the title-deed, and sends it to the elder and the headman.[6] These indorse it and return it to the seller, who hands it to the buyer. Where temple-land is to be sold, the procedure is as above, but the consent of all the parishioners[7] must be

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1. *Kabu*. 2. *Seri-oya*. 3. *Ko* (mouth)-*sen* (fee). 4. *Kari-shosho*. 5. *Ko-ken-jo*. 6. *Kendan*. 7. *Ujiko*. For the etymology of this word, cf. Satow, in Trans. Asiat. Soc. Jap., vol. III., App., pp. 80–82.

obtained. In Kubiki *kori*, if residence-land is to be sold, the owner must first notify his company and the neighbors on each side,[1] and if no one of them desires to buy, it may be sold to some other person of the same or perhaps another block. Perpetual sales of houses or residence-land are allowed in towns only. The proceedings begin by the seller and the buyer (the latter, if he is under some other headman, must bring a certificate from him) going to the headman[2] and asking for permission. This granted, the seller makes out a petition bearing his own seal and his company's, and takes it to the headman. The latter prepares a sale-title-deed,[3] has the vendor and his company seal it, seals it himself, and sends it to the elder. This one officially indorses it, and sends it on to the town-magistrate, who adds his seal,[4] and returns it to the elder, and the elder to the headman, who calls both parties before him, when payment is made and the property handed over. The parties may agree that after a number of years the seller may buy it back, or that the buyer is not to re-sell it to any one but the seller, the stipulation being expressed in an instrument. But the officials have nothing to do with this instrument, and it bears no official indorsement.

In Sado *kuni*, Sota *kori*, sales of cultivated land are nominally prohibited. For the purpose of a sale the instrument is drawn up for a 10-year pledge,[5] and on failure of the debtor to redeem[6] at the expiration of the term, the land is forfeited, and the sale is thus complete. There is however, another method of sale, called "good-will grant,"[7] in which the seller delivers an instrument purporting to grant without consideration,[8] and agrees in a subsidiary document that after receipt of a reasonable price (the literal term being "money to buy wine"[9]), he will perpetually

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1. *Ryo-rin.* 2. *Nanushi.* 3. *Bai-ken-shosho.* 4. *Hyo* (exterior)-*sho* (seal). 5. *Jikkanen-mai-nenki-shichi-chi.* 6. *Uke-modosu.* 7. *Yoshimi-yuzuri.* 8. *Mu-dai-ka.* 9. *Shu-dai-kin.*

refrain from disputing the title. In sales of town-lands a direct transfer of the ordinary sort is made.

SANINDO. In Tango *kuni*, Kasa *kori*, perpetual sales of cultivated land being forbidden, a sale is effected under the name of "grant for a term of years," and if at the end of the term, the seller does not buy back, he surrenders all his right to the property. In some villages a memorandum-slip is attached to the land-register[1] entry during the term, and at its expiration a new entry is made in the register. In sales of residence-land in towns there is no special proceeding other than the change of names in the land-register.[2]

In Inaba *kuni*, Omi *kori*, there is no prohibition of sales of cultivated land; the local officials change the names in the land-register[1] and the property-right is transferred. In sales of town-lands, the permission of the feudal official must be obtained, and when the annual revision of the land-register[2] takes place, [the buyer] contributes a sum equal to one-tenth of the [assessed] value of the land (not of the actual selling price).

In Idzumo *kuni*, Shimane *kori*, when residence-land is to be sold, the seller petitions the authorities, making out 3 copies of the instrument, which contains the seals of the seller himself and his company, and the official indorsement of the ward-elder. One of these is given to the buyer, and the other 2 to the feudal office and the chief-official-of-sales.[3] The seller then appears in full dress[4] before the town-magistrate, who gives him a document called "sale-title-deed."[5] By a law of the fief [perpetual] sales of cultivated land and forest land [in villages] are not officially recognized. The transfer is therefore accomplished by making a sale for 10 years, the price mentioned being so high that redemption in that time is impossible. The

1. *Nayosei-cho*. 2. *Yezu* (map)-*cho*, probably a book showing the boundaries, etc., of each piece of land. 3. *Baiken-jōkwan*. 4. *Rei-fu* (that is, with *haori* and *hakama*). 5. *Baken-jō*.

headman[1] assumes that redemption will be impossible, and as soon as the transaction is finished, changes the name of the owner in the register of sales.[2] The sale is made by means of an instrument bearing the seals of the seller, his company, and the headman, and handed to the elder. In the 8th month of every year a revision is made of the land-register (kept by the ward-elder, and containing the extent and location of each plot of land), and the transactions of the year are noted therein. Forest-land and houses may be sold in perpetuity without the above procedure. Where goods are lost or destroyed while being transported to the buyer, the seller is responsible, and so cannot claim the price. The buyer pays at the time of the bargain so-called "contract-money;"[3] if he breaks the contract, he forfeits this; if the seller breaks it, he must restore double the amount. In auctions a "lowest-ticket"[4] is made out, containing the lowest price at which the owner will sell. If, when the bids are opened, the highest price offered is lower than the one so fixed, the owner may decline to sell. If another person [afterward, but before delivery] wishes to buy the article, he must give to the buyer an amount equal to one-tenth of the price which he pays the seller. In Uwonuma *kori*, when upland or residence land [in towns] is to be sold, the seller makes out and seals an instrument, which recites that the property is sold in perpetuity and that the descendants of the seller shall never object to the transfer. This is given to the elder and the chief-elder, and after their official indorsement, the feudal-official[5] (of the Chishima and Kitajima fiefs) indorses. Sales for terms of years of such property are forbidden. In sales of houses the indorsement of the feudal-office is not necessary. The instrument always contains the following clause: "If [before delivery]

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1. *Shōya.* 2. *Bai-ken-hikaye-cho.* 3. *Yakujō-kin.* 4. *Shiki-fuda.* 5. *Jō-kwan.*

the property is destroyed by calamity of Heaven or is taken for public purposes,[1] the seller is not responsible." In sales of personalty, a private document[2] alone is necessary, and sometimes an oral agreement[3] only is made.

In Nōmi *kori*, when an article sold turns out to be not as contracted for,[4] the buyer may refuse to take it, without forfeiting his earnest-money. Where realty is sold, and the seller has some reason for wishing to buy it back at some time, the sale is made for a term of years; this is stated in the instrument of sale, and the transaction called an "agreement for the return of the original."[5] If at the time fixed the seller cannot redeem, the buyer's ownership becomes perpetual. While the condition remains in force, the seller pays all the taxes.

In Iwami *kuni*, Shima *kori*, cultivated, forest, and residence land are forbidden to be sold, and hence only pledges of such may be made. When it is desired to sell such property, the owner makes out an instrument sealed by himself and his company, naming the sum (which is in fact too high for a pledge) and fixing the term as one year. When the year elapses and he does not redeem, the land is called "forfeited-land,"[6] and the buyer becomes the owner There is no prohibition of the sale of houses or personalty, nor is the indorsement of the village or ward officers needed. When personalty is bought and received, and it is destroyed by the buyer or lost or stolen before he has examined it to see whether it is of the agreed sort, the buyer must pay the fair value. If the article proves to be not as contracted for,[7] the buyer cannot demand the restoration of the price paid, if the seller was not the maker and did not know of

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1. *Kō-butsu*. 2. *Aitai* (face to face alone, without others' intervention)-*shosho*, i. e. no report and official indorsement are required. 3. *Kuchi-yakusoku*. 4. *Gan* (spurious, counterfeit)-*zo* (make). 5. *Honmotsu* (original or principal thing)-*kayeshi* (return) *no yakusoku*. 6. *Nagare-chi*. 7. *Gan-zo*.

the defect. In Naka *kori*, when sales of cultivated or residence land are made, the sale is in perpetuity. The instrument is sealed by the seller and by some relative as witness, and contains the following clause: "I hereby sell the above property, and neither I nor my descendants may hereafter raise objection to this transfer." In towns the inspector[1] and in villages the headman,[2] must indorse. This indorsement is called "evidential-seal;"[3] and a "divided seal"[4] is also added to the register and the vendor's instrument of sale. In sales of cultivated land, the seller may always take when ripe the crop that he has planted, even though the buyer has already paid the price.

SANYODO. In Harima *kuni*, Shikito *kori*, in the case of houses and residence land in towns, private sales[5] are not permitted, The custom is for the ward-elder, on petition, to announce through the ward that the land is for sale and to dispose of it by secret-ticket auction.

In Mimasaka *kuni*, Nishihōjō *kori*, in towns, when one desires to sell residence-land, he must first consult his company. If no one object, he petitions the elder and chief elder, who officially indorse the instrument, and then asks the permission of the town-magistrate. This given, the buyer receives the land, pays the price to the seller, and gives to the town-magistrate one-twentieth of the price as a fee.[6] In Katsunami *kori*, when cultivated land is sold, the seller makes out an instrument sealed by the headman,[7] the company-chief, and the farmers' representative; these are called the "three seals of the village officers."[8] But rice-land or upland may not be transferred in perpetuity; a "third-month sale"[9] or "term of years sale"[10] is usually

1. *Moku-dai.* 2. *Shoya.* 3. *Ken-in.* 4. *Wari-in*,-a seal so impressed that part remains on one document, part on another, thus offording a test of genuineness. The expedient is similar to that implied in our term "indenture." 5. *Aitai-uri.* 6. *Tesu-ryo.* 7. *Shoya.* 8. *Murayakunin no sampan.* 9. *Sangatsu-uri.* 10. *Nengen-uri.*

made. In the former, the transaction takes place in the third month of the year, and in the third month of the succeeding year the seller restores the price with the interest and receives back his land. In the latter, a term of years, usually 5 or 10, is fixed on, and at its expiration the seller buys back the land. Forest-land may be sold in perpetuity, but the "three seals of the village officers"[1] must be obtained.

In Bizen *kuni*, Kamimichi *kori*, in sales of cattle and horses (but not of other personalty), there must be an instrument sealed by the headman.

In Bigo *kuni*, Fukatsu *kori*, in sales of cultivated land in villages, the seal-chief[2] counter-seals and the headman[3] and the company-chief officially seal the instrument, entries of all sales being made in the land-register[4] at the time of the annual revision in the fifth or sixth month. In sales of houses and residence-lands in towns, the headman[5] draws up the instrument, the parties appear with the company-chief[6] as witness, and seal the instrument. The names are then changed in the land-register[7] in the presence of the parties. In Mitsuki *kori*, there is no prohibition against perpetual sales of cultivated land in villages. The headman[3] affixes an indorsing-seal to the deed of sale, and at the regular revision of the land-register[4] changes the names of the parties. In sales of houses and residence-land in towns, the seller files a petition, as well as the deed of sale, at the local office, and the elder then affixes an indorsing seal. At the time of the annual revision[8] of the register the parties and the witnesses appear at the town-magistrate's office and

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1. *Murayakunin no sampan.* 2. *Hangashira* (the chief of the 5-men company). 3. *Shoya.* 4. *Nayosei-cho.* 5. *Shuku* (a post-town)-*rō* (elder). Here the word has some special local significance. 6. *Tsuri* (hooking, fishing)-*gashira* (chief). *Tsuri* here leaves us without a clue; but the word seems equivalent to *kumi-gashira.* 7. *Ken-cho.* 8. *Cho* (book)-*kiri* (erase)-*aratame* (revise).

seal [the register] in the presence of the officials, and the names are changed in the house-register.[1]

In Aki *kuni*, Numata and Aki *kori*, in sales of cultivated land in villages, the seller delivers his "*tsubo*[2] memorandum" to the local officials, and the latter, making out a new one, deliver it to the buyer and change the names in the land-register.[3] In sales of houses and residence-land in towns, both parties file petitions, and the local officials, adding an attestation seal, forward them to the feudal official; then both parties seal in the presence of the feudal officials, and the proper change in the register is made. It is the custom not to permit the wearing of full dress by others than owners of houses or residence-land, and the buyer, at the time of the sale, puts on a new full dress suit, and sometimes the seller strips off his own.

In Suwō *kuni*, Tsuno *kori*, the perpetual sale of cultivated and residence-land is forbidden by a law of the fief. A transfer is therefore made for a term of years (usually 10 or 15), and during the term the buyer takes the profits. The instrument recites that if the seller repays to the buyer the price, with interest, at the end of the term, the property will be restored; but if the seller cannot repay it, the property will be transferred into the buyer's name. The transaction is reported to the elder or the balks-headman,[4] and the instrument bears the seals of the seller and his company. In the sale of forest-land, the same procedure is followed. In Kyūka *kori*, where an article sold is destroyed before delivery, the seller is obliged to deliver another article in its place or to make up the loss, whether the article was destroyed by calamity of Heaven or otherwise.[5] Where the article is bought and delivery taken and cash paid down at the time, the buyer cannot complain that the

1. *Iye-cho*. 2. *Tsubo*, a superficial measure about 6 feet square. This paper certified apparently to the area of the piece of land. 3. *Mizu-cho*. 4. *Han* (balk)-*to* (chief)-*shoya*. 5. That is, perhaps, if the price has been paid by the buyer.

its expiration the seller may buy it back. But even if he fails to do so then, he [or his descendants] have a right to buy it back after 20 or 30 or even 100 years. This transaction is usually entered into because the owner is unable to pay his taxes and is oppressed by the arrears. Hence such sales are forbidden, unless it is stipulated in the contract that the buyer shall pay the taxes.

In sales of personalty, the seller must deliver the article, and must also guarantee its genuineness; the buyer must pay at the time and place agreed on. If either fails to perform, the other may refuse to perform on his part. But such strict rules are practiced for the most part by merchants only, not by outsiders.[1] In Mihara *kori*, there is no prohibition upon the sale of forest land, and the price may be paid in either money or rice. Houses may be sold in perpetuity.

In Awa *kuni*, Nabigashi *kori*, cultivated, residence, and forest land may not be sold without official indorsement of the headman[2] and the elder. When personalty is sold, and the buyer refuses to accept, the current price having fallen before the time of delivery, he loses the earnest money; if none had been given, he must compensate the seller. If the seller refuses to deliver, he must restore double the earnest-money, by way of penalty. But usually some compromise[3] is made. In Miyoshi *kori*, when the buyer fails to keep his contract, he loses the earnest-money. If the seller fails to perform, the contract is at an end, as if there had been none, and it is sufficient if the seller returns merely the earnest-money.

In Sanuki *kuni*, Kagawa *kori*, it is the custom to obtain permission of the feudal official for sales of houses and residence-land in towns, and a fee is paid of 5 *bu*[4] in silver for each *ken*[5] of frontage. In Naka *kori*, sales of cultivated

1. *Shirōtō*. 2. *Shoya*. 3. *Jidan*. 4. One-fourth of a *ryo*, the old coin corresponding to the dollar. 5. A linear measure of about 6 feet.

land in villages are nominally forbidden. A transfer is effected by giving a document which recites that the seller is already indebted to the buyer in an amount which he cannot repay and therefore transfers the property by way of satisfaction; in fact, however, he is not indebted, but receives money as the price of the land. For sales of houses and residence-land in towns, it is the custom to procure permission from the feudal official by the filing of a petition on the part of both parties.

In Iyo *kuni*, Uma *kori*, there is no prohibition against perpetual sales of cultivated land. At the time of the sale the buyer receives the price and delivers the title-deed, and then reports the sale to the local officials, who change the names in the register, without concerning themselves about the documents which the parties may have exchanged. In sales of houses and residence-land in towns the ward-officials, on presentation of a letter of permission from the magistrate, change the name of the proprietor in the register. In Onsen *kori*, sales of cultivated land in villages are nominally prohibited. But a sale is effected under the name of a transfer of the "labor of cultivation."[1] Both parties go to the headman's[2] house and affix their seals in the land-register;[3] but no special instrument is employed and no price is stated; a price passes, however, under the name of "wine and fish money."[4] But sales and pledges of newly-reclaimed land[5] are not forbidden, and sometimes the headman counterseals the instrument. In sales of houses and residence-land in towns, the parties go together to the house of the chief elder, where the house-register is kept, and the buyer affixes his seal.

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1. *Kosaku no rō.* 2. *Shoya.* 3. *Ji-yosei-cho.* 4. I. e., money to pay for a feast in honor of the transaction. This epithet and similar ones are frequently used, even at the present day, merely as a euphemism for a regular fee or price. 5. *Kai-kon shinden.*

In Tosa *kuni*, Tosa *kori*,[1] the law does not permit the sale of original lands,[2] but new land[3] may be bought and sold at will. By "original" land is meant, in Tosa, all pieces of land recorded as under cultivation in the survey book as revised in the time of the Chosokabe family; "new" land are those brought under cultivation since the time when the fiei came into the hands of the Yamauchi family.[3] In Hata *kori* sales of cultivated land must be officially indorsed by the headman.[4] Houses may be transferred without restriction. In Kochi *kori*, secret-ticket auction is advertised by posting a notice on the public notice-board. Usually the vendor prepares beforehand a "lowest-ticket,"[5] and if none of the bids exceed this amount, the vendor may decline to sell. Until recently, if either party failed to perform his part in a contract of sale, he was excused on showing that his failure was due to calamity of Heaven. But nowadays he is not excused, whatever the cause; he must make some sort of compensation.

SAIKAIDO. In Chikuzen, Sagara and Naka *kori*, in sales of cultivated land, the parties execute an instrument of perpetual sale, the surety counterseals, the headman[4] officially seals, and when the names have been changed in the land register,[6] the property passes. In sales of residence land in towns, the elder seals the instrument, the parties obtain permission from the feudal official, and the names are changed in the land-register.[6]

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1. The record of customs here given for Tosa is especially unsatisfactory, because the tenures and their features were in that district peculiarly interesting and complicated. A more extended account will be found in Mr. Grinnan's "Feudal Land Tenure in Tosa," Trans. As. Soc. Jap., 1892. 2. *Honden*. 3. *Shinden*. When Iyeyasu obtained the ascendancy in 1600, he made many change in the various lordships. One of these changes was the substitution in Tosa of the Yamauchi family for the Chosokabe family. 4. *Shoya*. 5. *Shikifuda*. 6. *Nayosei-cho*.

In Chikugo *kuni*, Mitsuma *kori*, the seals of the inspector[1] and the headman[2] must be obtained for sales of realty.

In Buzen *kuni*, Kiku *kori*, there is no prohibition as to perpetual sales of cultivated and forest-land. Both parties file a petition and the local officials change the names in the land-register.[3] In sales of residence-land in towns, the ward elder merely gives his consent, and the register is not always changed.

In Hizen *kuni*, Sonoki *kori*, in sales of town-lands, the parties report at the local office, and the elder changes the names in the land-register.[4] In villages the parties report and the headman[2] changes the names in the register.[5] In Saga *kori*, the property is delivered, in ordinary auctions, to the highest bidder, and in secret-ticket auctions, to the person whose ticket reads highest. If after the highest bidder is announced, the owner declines to sell, he is obliged to give some compensation proportionate to the amount bid. In Amakusa *kori*, an ancient law forbids the perpetual sale of land, except for building purposes.

In Hyuga *kuni*, Miyazaki and Koya *kori*, the complete right of property does not exist. When a sale is desired, the parties, as in the case of a grant of cultivation referred to in the next chapter, report to the local officials that they wish a transfer because the seller is unable to pay his taxes. The officials then change the names in the land-register[6] and charge the taxes and minor expenses to the buyer. In town-land sales, the names are changed in the register, after obtaining permission of the district-chief.[7]

In Osumi *kuni*, Sō *kori*, in villages, in sales of newly-reclaimed land,[8] the permission of the headman[2] alone suffices. In towns, the parties prepare a separate paper, in

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1. *Metsuke*. 2. *Shoya*. 3. *Chobo*. 4. *Mizu-cho*. 5. *Na-yosei-cho*. 6. *Taka* (production)-*tsuke* (fix)-*cho*. 7. *Bu-gashira*. What sort of a district this was is not clear. The name was local. 8. *Kaitaku-chi*.

addition to the instrument of sale, and petition the feudal official, who alters the title-deed[1] and re-delivers it to the buyer. There are no sales of ordinary cultivated land.

In Iki *kuni*, Ishido *kori*, all rice-field and upland, but not forest-land and new land formed by subsidence of the sea, is the common property[2] of the whole village, and its sale is forbidden.

In Tsushima *kuni*, Shimoagata *kori*, public land[3] is received in trust[4] from the feudal lord by the cultivators and no sale is allowed. In sales of private cultivated land,[5] the parties file a petition, and, after permission is obtained, transfer the property. In sales of town-land, a report to the feudal official is all that is required.

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1. *Kenjo.* 2. *Kyo-yu.* 3. *Koden.* 4. *Adzu-kari.* 5. *Shi-den.*

CHAPTER IV.

LETTING AND HIRING.[1]

REAL PROPERTY.

The usual name for a person who hires[2] the land of another and cultivates it, paying to the latter a portion of the produce of cultivation[3] of rice, is "cropper."[4] One who hires another's ground and builds a house on it is called "ground-renter;"[5] while one who merely hires and lives in another's house is called "house-renter."[6] In regard to cropping, the law is that there should be a written

1. *Tai* (lend)-*shaku* (borrow). 2. *Kariru.* 3. *Saku-toku-mai.* 4. *Ko* (small, petty)-*saku* (produce, crop)-*nin* (person). This term (which must be distinguished from *kō-saku*, producing a crop, i. e. cultivation in general) seems best rendered by "cropper," a word unusual, but etymologically exceedingly apt, and, in meaning, corresponding to a similar institution in Europe. Some considerations call for the use of the term "cultivator," and the analogy of the Latin term "*colo-nus*" bears on this side. But after some hesitation it has seemed that, taking into the reckoning the various passages, the best rendering is "cropper," for *kosaku-nin*, and "cropping," for *kosaku*. Where the reference is clear, the word "tenant" has sometimes been used, to avoid cumbering the page with repetitions of an unusual term; but wherever the literal rendering and the identification of the term is of any consequence whatever, "cropper" is employed. 5. *Shaku-chi-nin.* 6. *Shaku-ka-nin.*

instrument; but usually there is only a private agreement,[1] made by word of mouth;[1] and as there is no fixing of the term, the landlord[2] has the right to take back[3] the estate at any time, even though the tenant may have been cultivating it for many tens of years. As to ground-renters and house-renters, there is usually a surety required, so that the parties interchange instruments, fixing in them the amount of rent.[4] The variations from these general principles are as follows.

KINAI. In Settsu *kuni*, Nishinari *kori*, when a person desires to rent a house, he gives his name and occupation, and this is reported [by the house-owner] to his company and to the elder. The consent of all members of the village (or, in towns, of the block)[5] must be obtained, and if the person becomes tenant, he must observe all the customs of the village or block, engaging to this effect by a written instrument, and also giving a written instrument to the house-owner. If he fails to pay rent, the owner may retake possession of the house. The owner is bound to do all repairs on the house. In Yabe *kori*, [in villages] no written instrument is employed [as a rule]. The term[6] is one year. But where the rent[7] is a fixed amount without regard to the goodness or badness of the season, the landlord usually lets[8] for a long period and a written instrument is given. This is called "long cropping."[9] The same term is used also where waste-land[10] has been reclaimed and brought under cultivation;[11] and the cropper in this case may transfer his interest[12] to another person, without asking the consent of the landlord. As for the house-renter,

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1. *Aitai* (face to face)-*kuchi* (mouth)-*yakusoku* (agreement). 2. *Ji* (land)-*nushi* (owner, master). 3. *Tori-modosu*. 4. *Chin-kin*. 5. *Chō*. 6. *Kigen*. 7. *Nengu*. 8. *Seshimuru*. 9. *Naga-kosaku*. 10. *Are-chi*. 11. *Kai-kon*. 12. *Kabu*. This term is employed of shares in a corporation or of the membership in a guild. Here it seems to signify such an interest in the land as the transferor may have.

his rights among his townspeople are of an inferior sort, and he is never chosen to be a ward-officer; moreover it is an old rule that no one is to rent him a house unless he furnishes a surety for his conduct.[1]

TOKAIDO. In Iga *kuni*, Abe *kori*, no deed is employed for cropping. It is the custom for the local officials to collect the landlord's share of the produce, and the landlord does not trouble himself about it. In "long cropping" a written instrument passes, and the tenant may sub-let the land to another person as cropper, without obtaining the consent of the landlord. But if the rent is not paid, the landlord demands it, not of the actual cultivator, but of the original renter. In regard to house-renters, it is the custom for the house-owner[2] who desires to have such a tenant to obtain permission from the ward-elder through the ward-officials. As a rule the rights of a house-renter, as compared with those of a householder,[3] are inferior, and it is an old rule that at the time of the feudal lord's return to his castle the heads of families who are house owners may go out to the next village to meet him, but not mere house-renters.

In Ise *kuni*, Ano *kori*, the term of a cropper is one year; no instrument is made out. If the landlord cannot collect the rent, the headman[4] sometimes collects it directly from the cropper and hands it over to the landlord. House-renters [in towns] give a bond,[5] which is kept at the ward-office. They cannot be chosen as officers of the ward, nor can they be sureties for loans. In Wataraye *kori*, the landlord is called "esquire,"[6] and the cropper "farmer." There is no general rules as to the length of the term, and in very few instances is an instrument drawn up. There is no naming of the total area or production of the land;

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1. *Mimoto* (character)-*hikiuke-nin*. 2. *Iye-nushi*. 3. *Iye-mochi*, the meaning being here the same as *iye-nushi*. 4. *Shoya*. 5. *Uke-jo*. 6. *Jitō*. See Introduction.

the tenant merely pays a rent fixed at so many *to* of grain per *tan* of land, and the relation thus resembles that existing elsewhere between lord and farmer. If after many years the family of the esquire becomes extinct or removes to other parts, the land sometimes become the possessions of the croppers themselves. In the Sacred Domain[1] there is no house-renting. Although the thing itself exists, the name "living under the same roof"[2] is preferred, because of a fear that persons from other domains temporarily residing there would not be careful about fire-defilement.[3]

In Owari *kuni*, Aichi *kori*, their is usually no instrument made in case of croppers. But where the taxes[4] and incidental burdens[5] are charged upon the tenant, there is a written instrument, and the term is usually fixed at one year. But in a village which practices land partition[6] the term for croppers corresponds to the term of re-partition. The system of partition is this: about every 10 years the village holds a consultation, makes a survey[7] and an inspection of the land, and distributes the proprietorship by lot. One result of this is that, where an irrigation-channel[8] exists, selfishness does not lead one to draw water for his own land only;[9] moreover, repairs of the irrigation works are made dutifully and generously; so that the system is an advantageous one. The cropper is called a "landless"[10] person, and so has no right to an equal position with a "land-holding"[11] farmer. House-renters in towns cannot

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1. A portion of this province belonged to one of the two great national Shinto shrines. 2. *Dō-kyo*. This term generally signifies a dependent, a poor relation or other person subsisting at the expense of a family-master and forming a member of the household. 3. *Hi-kegareru*. This refers apparently to the kindling of fires in some place or manner forbidden by the temple-management. 4. *Koso*. 5. *Sho-hi*. 6. *Chi-wari*. 7. *Soku-ryo*. 8. *Yosui mizo*. 9. A similar phrase is still current as a proverb applied to persons seeking their own interests. 10. *Mu-taka* (without assessed production). 11. *Taka-mochi*.

be sureties or witnesses. There is in general no fixing of a term, and the house-owner may evict [1] when he pleases.

In Mikawa *kuni*, Atsumi *kori*, there is no rule as to the rent. A cropper who reclaims and cultivates waste land is called "long-cropper;" and the sale of his right of cultivation[2] is in his own disposal, the landlord having no right to control it. In house-renting the usual term is one year, and it is the custom to pay one year's house-rent[3] in advance.[4] As to the repairs,[5] those of outside erections, of roof, and of walls are at the charge of the house-owner; the others, of the tenant. In Nukata *kori*, no written instrument is made by a cropper and no term fixed. Croppers who rent new land are called "long-croppers," and these may at pleasure sell their cultivation-right without permission of the landlord.

In Totomi *kuni*, Sano *kori*, no term is fixed in cropping contracts, and the tenant must furnish a surety. The landlord customarily advances a supply of rice to the tenant, which he subtracts from the tenant's share at the time of the next autumnal harvest. Croppers sometimes hire waste-land, reclaim and cultivate it, and make it into tax-paying land. These, as well as those who have cultivated a piece of land continually for more than 20 years, are called "long-croppers," and the landlord cannot re-possess himself of the land at his pleasure. Croppers, in general, rank a degree below other farmers in the village, and are never chosen as heads of companies. In Suchi *kori*, an instrument is drawn up in cropping contracts; sometimes the tenant is charged with payment of taxes and village burdens. There is no fixed custom as to length of term; but after 10 years elapse the expression "long-cropping" is used, and the landlord cannot re-possess himself of the land, except

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1. *Tana* (shop)-*date* (put out). 2. *Kosaku kabu*. 3. *Tana-chin*. 4. *Zen* (before)-*kin*. 5. *Shŭ-fuku*.

for non-payment of rent.[1] For this reason the instrument is always renewed about 8 years. A house-renter must bring some neighbor as surety, whose bond the landlord takes. The landlord generally repairs roof, walls, and outside erections; while the tenant brings with him [and repairs] interior fixtures and mats.

In Suruga *kuni*, Abe and Udo *kori*, a landlord keeps a register of croppers, and the parties stipulate as to the amount of rent,[2] fixing the term at one year. The tenant seals[3] the register on the 11th day of the 1st month, the custom being to do so every year, no matter how many tens of years he has cultivated the land. In case of non-payment the landlord may possess himself of the land. House-renters must furnish a "house surety,"[4] who gives a bond; this the ward-chief[5] receives and keeps. There is no special rule as to length of term. The house-owner has the duty of repairing the whole house; but it is the custom for the tenant to bring with him [and repair] interior fixtures and mats. The excremental manure of the house is regarded as the perquisite of the house-owner, and farmers from the neighboring districts come and take it, giving in payment to the house-owner "rice for cakes," and at the end of year, at the time of cake-making, he reserves six-tenths of his cake for himself and sends four-tenths to the house-renter. By reason of this custom even the poorest day-laborer[6] feels sure of his New Year's cake. In Shida and Mashizu *kori* no instrument of lease is used. The parties renew the covenant on the 11th day of the 1st month of every year, executing a contract for one year. When cultivation has gone on continuously for more than 20 years, it is called "long-cropping," and the landlord cannot easily re-possess himself.

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1. *Fu* (not)-*no* (pay)-*mai* (rice, rent). 2. *Kosaku-mai*. 3. *Ō-in*. 4. *Tana-uke-nin*. 5. *Machi-gashira*. 6. *Hi-kasegi*.

In Kai *kuni*, Yamanashi *kori*, when cultivated land is hired, the lessor during the term has no right to take the land away and lease it to another, if rent is paid at the fixed time.

In Idzu *kuni*, Takata *kori*, no instrument of lease is used. Sometimes cultivation is continued by the same family for more than 100 years, and though the owner may change, the cultivator remains. Sometimes, on the other hand, the landlord resumes possession after a year or two; so that there is no general practice as to length of term.

In Sagami *kuni*, Ashigara *kori*, the cropping contract is made in the second month of the year, and the term is one year. No instrument is employed; and the landlord on non-payment of rent[1] may resume possession immediately. The house-owner repairs[2] the roof, walls, and outside erections, while the tenant repairs interior fixtures and mats. If a house is furnished,[3] the rent[4] is of course higher.

In Kadzusa *kuni*, Moda *kori*, an instrument of lease is employed, but no general practice exists as to length of term. "Long croppers" include as a rule men who were the former proprietors of the land, and this kind of tenancy does not depend on any special period of cultivation. House-renters must furnish a surety, who must be a land-owner.

TOSANDO. In Omi *kuni*, Shiga *kori*, no instrument of lease is employed, but if the cropper is a person of small means, some relative becomes surety. A term of years is always fixed. "Long-cropping," properly so called, does not exist; but the term is used where the common land of the village is rented to another village for cultivation.

In Mino *kuni*, Awachi *kori*, no instrument of lease is employed, but the "hand-book"[5] of the landlord is used

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1. *Kosaku-kin.* 2. *Shuzen.* 3. *Dōgu-tsuki-nite.* 4. *Ya-chin.* 5. *Te-cho.*

as evidence of the contract. When rent[1] is in arrears[2] [and bankruptcy takes place], the landlord has a first claim[3] on the tenant's property, similar to that given to the village and to the feudal-lord for non-payment of taxes. Even though a tenant has cultivated land for many tens of years, the landlord has the right to resume possession at his pleasure. But it is not so in case of cultivators of newly reclaimed land.[4]

In Shinano *kuni*, Ogata *kori*, there are two kinds of tenancy. One is called "different-cropping,"[5] the other "direct-cropping."[6] Where a tenancy continues for more than 20 years, the landlord cannot retake his land without reasonable cause, of whichever sort the tenancy may be; and if he attempts to do so while the tenant is paying rent as agreed, the latter may bring a suit. In Takai *kori*, the term of lease of cultivated land is usually 3 years, and for mulberry-upland or vegetable-plots, 10 years. In all leases of land [in villages] and houses [in towns], a written instrument, according to the "History of Takai," is required, as well as a surety, and if the landlord has neglected to obtain such a document, he is punished, in case the tenant violates the laws. By the present custom, an instrument is employed in all letting of cultivated land, houses, ships, or vehicles. In Saku *kori*, in leases of forest land or of buildings used for wine-making, a term is usually fixed, during which the landlord may not retake the property, unless the tenant refuses or is unable to pay the rent. In leases of houses[7] a written instrument is required. Since the period Kyoho (1716-1736) an instrument has been required by law in leases of cultivated land also; but

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1. *Kosaku-mai*. 2. *Todokoru*. 3. *Saki-dori-ken*. 4. *Kaikon-chi*. 5. *Betsu-kosaku*. "*Betsu-kosaku* was any renter of mortgaged land other than the mortgagee" (Simmons, *Notes on Land Tenure*, etc., p. 34). 6. *Jiki-kosaku*. "*Jiki-kosaku* was a mortgagee who attorned as tenant to the mortgagee."—*Ib*. 7. *Kaoku*.

very few in these villages take such instruments from their tenants. If the landlord lends seed-rice to the cropper, interest is taken. Waste land is often leased for one, two, or more years without rent; this is called "instalment."[1] In leases of cultivated land the term is usually 10 years; though this is not so of "direct-cropping."[2] Where cultivated land is leased as security for a debt, the term is usually one year and the lessor gives a surety for his debt. If at the end of that time he cannot pay, the surety undertakes to cultivate the land and pays off principal and interest by degrees. The surety is termed "manager."[3] In Hanu *kori*, a written instrument is employed in letting personalty, but not in letting realty. But the rule as to personalty is not always observed.

In Shimotsuke *kuni*, Tsuruga *kori*, the land-renter and the house-renter do not directly pay taxes,[4] so that their position is regarded as an inferior one, and at the time of the Nikko festival they may not wear full dress. In Kawachi *kori*, an instrument of lease is employed, one year being usually the term, and the covenant being made before the Spring Equinox in the 2nd month of each year. When the tenant is to be charged with taxes and incidental burdens, it is reported to the local officials. The name "long croppers" is applied to those who at their own expense have restored waste-land, or have brought new land into cultivation, and in such cases the landlord may not under any circumstances dispose of the land.

In Iwaki *kuni*, Shirakawa *kori*, no instrument of lease is used, and one year is the ordinary term. It is the custom to contract for the succeeding year when, at the

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1. *Nempu* (yearly or periodical payments). The application in this case is not apparent. 2. *Jiki-kosaku*,—because in this case the mortgagor might redeem at an indefinite time in the future, as will be seen by consulting the chapter on "Hypothec and Pledge." 3. *Sahai-nin*. 4. *Sozei*.

close of a year, the tenant brings in the landlord's share of the crop. There is no such thing as "long-cropping." In this province land is plentiful and the population small; so that few persons care to make cropping contracts, even though landlords offer to furnish manure.

In Iwashiro *kuni*, Shinobu *kori*, an instrument of lease is always employed. According to the nature of the term, leases are divided into "single-term bargains"[1] and "indefinite-term bargains."[2] In the former one year is the limit. The latter name is given when the owner makes what is called an "exempt *sanden*",[3] puts a cropper upon it, charging him with the taxes and incidental burdens, but asking in return only a share of the produce.[4] The phrase "long-cropping" is not used.

In Rikuzen *kuni*, Toda *kori*, there is no general term for the lease of land. But in that sort called "advance *sanden*"[5] (where a debtor by way of security entrusts his land to the creditor), the term is usually 1 year; the rent, in such cases, is paid in rice or other products, and the tenant pays the taxes. There are two general kinds of tenancy, the one just mentioned, and the ordinary kind,

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1. *Ikki* (single-term)-*date* (put, invest, set up). But *date* is also used to signify "put out," "evict", e. g. *tana-date*, (eviction from a shop); and it may be that the idea conveyed in *ikki-date* is "eviction after one term". But it does not seem probable that the parties would have the notion of eviction so strongly in their minds at the time of making the bargain as to make it a part of the ordinary phrase for tenancy. 2. *Nenki-date*. 3. *Maru* (entirely)-*men* (exempt-*san* (scattered)-*den* (land). The exemption seems to consist in the owner being relieved from taxes. *Sanden* seems to have been the ordinary term corresponding to *kosaku*. Probably *sanden* lay in scattered patches here and there; the cultivator owned his home and hired patches from different owners in different places. Perhaps the *ko* (small) of *kosaku* (lit., small-cultivation) refers to the smallness of these patches, while the *san* (scattered) of *sanden* lays the emphasis on their scattered position. 4. *Riyeki-mai*, presumably much smaller than a regular rental. 5. *Maye* (before)-*sanden*.

called here "permanent *sanden*."[1] In both kinds the obligation of the tenant is only to pay rice-rent[2] to the landlord; while the lessor is under the obligation of clearing out the water-channels, repairing roads and bridges, and otherwise doing what is required for the tenant's welfare. But the parties may agree not to abide by this custom. If the tenant fails to pay, the lessor may terminate the contract; and he may demand the rent of the surety or the headman, or perhaps he brings suit. In Miyagi *kori*, in lease of houses[3] or land,[4] the lessee and his company give notice to the headman,[5] (as in the case of a change of residence) and the latter occupies the position of a surety. But such leases may not be made between members of different fiefs or between a resident of a town and a resident of a village. The amount of rent is usually reckoned at so much a year. If the lessee fails to pay as agreed, the lessor may retake possession. The lessee of a house usually repairs the mats[6] and wooden fixtures,[7] and the lessor repairs the roof and the like. The term for a lease of land is usually 10 years, and for a house, 3 or 5 years.

In Rikuchu *kuni*, Isawa *kori*, an instrument of lease is used and a term is fixed; but "long-cropping," so-called, is not known. However, one who has reclaimed waste land becomes in fact a "long-cropper," for he cannot be evicted at the landlord's pleasure. In Iwate *kori*, an instrument of lease is used, but there is no rule as to the term. If the rent[8] is paid, things are allowed to go on as they are for tens of years indefinitely; but it is not genuine "long-cropping," and the landlord has the right to resume possession whenever it suits his convenience.

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1. *Sanden-tetsuke* (fix). But in both of these term the turn of thought is not entirely clear. 2. *Tokumai*. 3. *Kaoku*. 4. *Jisho*. 5. *Nanushi*. 6. *Tatami*. 7. *Tategu*. 8. *Saku-toku-mai*.

In Uzen *kuni*, Okitama *kori*, when rice-land or upland is leased as security for debt, a written instrument is required, bearing the indorsement of the headman;[1] without this, the instrument is not a valid proof of the transaction. If the headman by mistake indorses a second lease of the same land, and a lawsuit results,[2] the headman must pay compensation to the injured party. There is a so-called "perpetual *sanden*"[3] (*sanden* is like an ordinary lease, the lessor paying taxes, and the lessee paying rent in rice or perhaps in money), in which no term is fixed and the landlord cannot retake or sell the land without reasonable cause; nor can the tenant give it back without good cause, for such land is generally the common property of the village,[4] and the right to give back at pleasure would incommode the village. There is another sort of tenancy, by which the tenant pays the taxes and also a fixed rent of money or rice; but the landlord may sell or retake the land at any time. This is called *tokumai*.[5] In general, the removal of obstructions (earth or snow) on the roads or paths is done by the tenant. In leases of houses also, the lessee has the obligation of clearing the ways. The lessor of the house, when he wishes to retake possession, must give a notice of 20 days or (in some places) 2 months. Where the lessor has land on one side of a river and the lessee on the other, the bridge-repairs are made jointly, the lessor furnishing the materials and the lessee the labor. Where a water-channel is used by them jointly, the same rule holds.

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1. *Kendan*. 2. That is, if injury is caused to the second lessee so that he needs some redress. The lawsuit referred to is not against the headman. 3. *Yei-sanden* (see Rikuzen *kuni*, *supra*). 4. *Kyu-yu-chi*. 5. This means, literally, "produce-rice." It has been translated usually "rice-rent." The exact application here is not clear; but it will be noted that *kacho*, meaning substantially the same as *tokumai*, is used, in Nagato *kuni*, Toyoda *kori*, *infra*, for a tenancy having similar incidents.

In Murayama *kori*, an instrument of lease is employed and a term is fixed. Those who continue to cultivate for more than 10 years are called "long-croppers", and, unless the rent be not paid, cannot be evicted at the landlord's pleasure. The same name is also applied to those who reclaim waste land or open new land, and in such a case it can never be taken from the tenant by the owner.

In Ugo *kuni*, Akita *kori*, in leases of land or houses, the tenant gives a written instrument, sealed by himself and a surety, to the lessor. If the tenant fails to pay rent,[1] the lessor may retake possession. The tenant, in leases of land, usually repairs wells and dikes; but by agreement the parties sometimes divide the expense equally. If the term is more than 10 years, the lessor is bound to repair the property before the lessee takes possession; otherwise not. In leases of houses, the lessor furnishes mats and wooden fixtures, and puts the house in good repair; the tenant thereafter keeps them in good condition. But the lessor always has to repair roofs, ceilings, and the like. If the lessee wishes to make a new window or door or roof-projection,[2] the consent of the lessor is required, and the lessee usually pays the expenses. In cases of cultivated land, the lessor may retake possession if the lessee injures the land or fails to keep it manured. But a notice of six months or a year must be given. The lessor repairs water-channels and the like.

HOKKAIDO. In Oshima *kuni*, Kamedo *kori*, in order to become a tenant of land, it is the custom to deliver to the landlord an instrument bearing the seal of a witness. As the cultivation of land is not the staple occupation of the people of this province, the term "cropper" is not used.

HOKUROKUDO. In Wakasa *kuni*, Onifu *kori*, the term is usually not less than 5 years, and an instrument is required to be used. "Long-cropping" does not exist. In house-

1. *Kake-mai*. 2. *Hisashi*.

renting one month is the usual term, and there must be an instrument sealed by a surety. A house-renter, even though he be worth 1000 *ryo*, cannot be elected to any office involving headship over other men.

In Echizen *kuni*, Asuha *kori*, no instrument of lease is used, oral contract being usual, and the agreement being renewed every year. In "long-cropping" the landlord has no right to resume possession when he pleases, provided rent be not in arrear; but the tenant cannot transfer his right of cultivation without the consent of the landlord. The rights of both house-renters in towns and croppers in villages are inferior; and only house-owners and land-owners [1] sit in the ward and village assemblies respectively, while the croppers and the house-renters are given the task of serving the wine. In Tsuruga *kori*, every landlord, between the 5th and 11th days of the 1st month, prepares a book [2] of leases in which the production, area, and cultivator's name of every leased plot of land are entered, and each cultivator affixes his seal. This occasion is called "land-inspection." [3] Where a person has occupied the waste land of another and turned it into either residence-land or cultivated land, he delivers to the landlord an instrument called a "deed of indefinite-inspection." [4] Such a cultivator has no term fixed, but pays a rice-rent [5] and cannot be deprived of the land by the owner at pleasure.

In Kaga *kuni*, Ishikawa *kori*, the term in leases of cultivated land is generally one year. But it is longer in the case of newly-reclaimed land [6] because here the labor of reclamation is bestowed by the tenant; so that usually a small rent [5] is paid and the term is not fixed. In leases of peach-tree upland [7] the term is generally 15 years, and in

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1. *Taka-mochi*. 2. *Chōbo*. 3. *Ta* (rice-field)-*oroshi* (taking down, i. e. as from a shelf, to inspect). 4. *Naga* (long, indefinite)-*oroshi*. The above is the apparent significance of the phrase. 5. *Toku-mai*. 6. *Shinkai-chi*. 7. *Nashi-hata*.

lotus lowland,[1] 10 or 15 years. In the case of newly-reclaimed land a term is usually agreed on after some years; but the title of course is in the lessor, and the tenant must still pay rent.[2] In leases of peach or lotus land, the tenant may transfer his interest to another person, or may even restore the land to the lessor before the term has ended. The tenant is always under the obligation not to injure the land. In no case is a surety or witness to the contract required. In leases of houses, a term is sometimes fixed, sometimes not. In the former case a deposit[3] is required. If the lessor is not to pay interest on this, an abatement is made in the rent agreed on. If the lessor at the expiration of the term fails to return the deposit, the lessee may have the house sold and get payment out of the proceeds. In towns, the term for the lease of a house[4] is usually one month, the rent being paid monthly. In Kawakita *kori*, the lessee of cultivated or forest land may use the land as he pleases, while his term lasts. However, he may not transfer his interest; or if circumstances oblige him to do so, he is still responsible for the rent. Where the crop is destroyed by calamity of Heaven, the tenant is usually excused from rent. In Nomi *kori*, notice must be given to the owner's company before he can lease his house.

In Noto *kuni*, Hōshi *kori*, where the tenant of land fails to pay the rice-rent,[5] the lessor complains to the district-chief[6] through the headman,[7] and the tenant's property is sold to pay the rent. The lessor may then retake possession, even though the term is not at an end. In Kashima *kori*, the lessee of a house may not transfer his interest without consent of the lessor. Where the property leased is destroyed by calamity of Heaven, the loss falls on the lessor; but if by fault[8] of the tenant, he must pay compensation. But if the tenancy is a perpetual one,[9] then

1. *Hasu-da.* 2. *Toku-mai.* 3. *Shiki-kin.* 4. *Tana.* 5. *Toku-mai.* 6. *Tō-mura.* 7. *Kimoiri.* 8. *Aya-machi.* 9. *Yei* (perpetual)-*uke* (undertake) or *yei-oroshi* (to take down, to inspect. See Echizen *kuni*, *ante*).

the loss in the former case falls on the tenant. In Hagui *kori*, the term for a lease of cultivated land is 4 or 6 years, according to the nature of the land or the custom of the village. When the term expires, the lessor, if the lessee has paid his rent regularly, is bound to renew the lease. In Suzu *kori*, in leases of residence or forest land or of salt-making beaches,[1] the lessor cannot terminate the lease, if the lessee pays rent regularly, even though no term has been fixed. The tenant may transfer his interest, but he is none the less looked to by the lessor for the payment of the rent.

In Echū *kuni*, Imizu *kori*, in leases of land, the tenant has a right to sub-let or to sell his interest. In order to change the use of the land or to cut down forests, he must obtain the lessor's consent. If he injures[2] the land, he must compensate the lessor at the expiration of the term. In Tonami *kori*, in leases of land, the term is usually for one harvest only; but the parties may agree to make it 10 or 15 years. A term of more than 20 years, however, is not allowed, as an inspection[3] of lands takes place in this region once in 20 years. In Nikawa *kori*, in leases of cultivated land, a written instrument is required, sealed by both parties and by a surety for the lessee. The term may be perpetual or for 3 years or only from harvest to harvest. In leases of houses, the term is commonly one year, beginning with the 3d month; but this may be varied by agreement, and there is no fixed custom. A written instrument, with a surety or witness, is required. The lessor may retake possession, if the lessee fails to pay the rice-rent[4] or the land-tax,[5] even though the term is not ended. Yet if the tenant soon afterwards pays what is due, the lessor must allow him to continue the lease. The tenant may not transfer his interest.

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1. *Seiyen-hamachi* cf. Rein, "Industries of Japan," s. v. "Salt." 2. *Arasu* (almost equivalent to our "waste"). 3. *Bun-ken*. 4. *Tokumai*. 5. *Chi-zō*.

In Echigo *kuni*, Koshi *kori*, there is neither instrument of lease nor fixed term. It is the custom to let the tenant continue to cultivate indefinitely, so long as he pays rent. If the cultivation continues for more than 50 years, it is called "long-cropping," and the landlord cannot resume possession at his pleasure. Sometimes a person contracts to grant his possessions to another at a low price, and in exchange to cultivate perpetually[1] the land transferred. Sometimes a person buys land in a place distant from his home, and places his agent[2] upon it, to cultivate it. In both these cases the rights of "long-cropping" exist. In Kariha *kori*, cropping is called "single-cropping."[3] The term is one year, and the tenant gives an "irrigation-deed,"[4] "irrigation" being the common term for cropping. "Long-cropping" goes under the name of "cropping with [tax]-covenant"[5] the tenant giving an instrument and undertaking to pay taxes and incidental burdens; the landlord cannot resume possession at will. As there are rich persons among the croppers and house-renters, there is no inferiority of their rights in ordinary intercourse. In Kambara *kori*, in leases of cultivated land, the term is usually one year, and the tenancy is called "single-term cropping."[6] If the parties wish to renew the tenancy, this is done by making a note upon the instrument in the 11th or the 1st month. This may go on for 10 or 20 years. But a "perpetual-cropping"[1] is made only by express agreement at the inception of the tenancy; in this case the lessor can never retake possession, unless for non-payment of rent.[7] If the owner of the land sells it, the tenancy continues, and the tenant holds the land as against the new owner. When a "single-term cropping" is made, the

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1. *Yeitai-kosaku*. 2. *Dairi-nin*. 3. *Ichi-saku*, because the term is for one year and only a single crop is raised. 4. *Mizu-ire shomon*. 5. *Jo*-(without fail)-*uke* (promise)-*kosaku*. 6. *Ikki-kosaku*. 7. *Saku-tokumai*.

owner pays the taxes. He may retake possession, if the tenant fails to pay rent,[1] or injures the land, or sells his interest to another without consent of the owner; but notice must be given before the last day of the twelfth month.[2] The cropper may cut the grass on the balks and may plant peas or beans thereon. The owner pays the expense of repairing water-channels, bridges, and roads. A sale of the land by the owner terminates the lease. In a "perpetual-cropping" the cropper pays all local taxes and the rice-tax[3] directly to the headman[4] and receives the receipt; he also pays the expense of repairing bridges, roads, and water-channels; but expenses due to an unexpected cause, such as war or rebellion, are paid by the owner. There is a sort of cropping called "sub-letting cropping."[5] For example, A, the owner, leases to B, at a rent[1] of 5 *to*, and B leases it to C, taking a written instrument and a deposit,[6] and fixing the rent at 6 *to*. The term may be 1, 3, or 5 years. If for some default of B's, A retakes possession, C loses his rights in the land; nor can C have any claim against A, though morally B is bound to compensate C. In the same way as above, C may sub-let to D, and D to E. Where land is leased for the erection of a water-mill or a factory,[7] a term is fixed, and a written instrument, with surety, is given. The rent is paid annually, the amount varying with the circumstances of each case. When residence-land is leased, the term is usually one year, the rent being paid annually. If the tenancy continues for 2 years, it becomes a perpetual tenancy; so that if the owner sells the property, the tenant has the right to continue in possession. In leases of houses, the lease is of the structure[8] only;

1. *Saku-tokumai.* 2. But this rule, apparently, would apply only where, as above stated, the tenancy was renewable during the first month of the year. The investigator has not recorded the custom for tenancies renewable in the eleventh month. 3. *Shogakari, nengu.* 4. *Na-nushi.* 5. *Ten* (change, hand over)-*taishaku* (lease)-*kosaku.* 6. *Shiki-kin.* 7. *Suisha, seizoba.* 8. *Tate-mono.*

outside doors[1] and sliding paper-doors[2] are regarded as a part of the structure, but not other fixtures,[3] nor floor-coverings.[4]

In Uwonuma *kori*, one year is the usual time for "irrigation," and the instrument is altered on renewal of the lease. Where "irrigation" has gone on continuously for ten years, it is regarded as a "perpetual irrigation," even though no instrument of that sort has been given, and the landlord, unless rent is in arrear, cannot easily resume possession; but if the landlord sells the land to another person, the new owner may at his pleasure permit or forbid the tenancy to continue. In leases of residence-land, it is the custom, when land is to be let for an indefinite time, to agree that the lessee shall quit[5] the premises whenever the owner requires, paying so much rent[6] per year and so much for laborers' services;[7] and that the landlord, when he desires to resume possession, must give half a year's notice and must pay the expense of removal.

In Sado *kuni*, Sawata *kori*, in ordinary cropping contracts, a term is fixed, and no perpetual tenancies exist. The name "long-cropper" is used where a person, as in the case of the so-called "gate-way farmer,"[8] has a perpetual right of cultivation in temple-lands; but even in this case the land is sometimes resumed by the owner at pleasure. Both croppers and house-renters are regarded as having inferior rights, and they are not chosen to any office which involves the headship of men.

SANINDO. In Tamba *kuni*, Kuwata *kori*, no instrument of lease is used and no term is fixed. "Long-cropping"

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1. *To.* 2. *Shoji.* 3. *Tategu.* 4. *Shikimono.* 5. *Tachinoku.* 6. *Ji* (land)-*dai* (price). 7. *Ninsoku*,—doubtless the laboring services required from each householder on local public works; presumably the renter was regarded as the true obligor, as between the parties, though the owner alone was legally liable. 8. *Mon* (gate)-*zen* (before)-*hyakusho.* He rented the land belonging to a temple and lying just in front of or around it.

is unknown, and the landlord may resume possession at any time, even though the cultivator has been in possession far many tens of years. When the tenant changes moor-land[1] into wet-land,[2] instruments of perpetual lease[3] are exchanged. In Taki *kori*, there is a law that instruments of lease must be exchanged; but in fact no one does so. No term is fixed, nor is the name "long-cropping" used; but by custom a landlord cannot resume possession where the tenant has cultivated for more than 10 years, provided there are no arrears of rent.

In Tajima *kuni*, Izushi *kori*, no instrument of lease is used and no term is fixed. If rent is not in arrear, the landlord, as a matter of fact, never evicts the tenant; but the name "long-cropping" is not used and the right exists to evict at any time. Great watchfulness is exercised over changes of residence by house-renters, and an instrument is always employed.

In Inaba *kuni*, Homi *kori*, neither an instrument of lease nor a fixed term is customary in case of croppers'[4] contracts. If rent is not in arrear, cultivation may be continued for many tens of years. There is in name no "long-cropping," but a tenant sometimes hands over the cultivation to another person without the landlord's consent; though in such a case the latter always looks to the original tenant for payment, in case rent falls into arrears, and has the right to resume possession at any moment. House-renters of the lower class are not permitted in the towns to assume a firm name,[5] or to be elected officers of the ward.

In Hoki *kuni*, Aimi *kori*, no instrument of lease is used and no term fixed. If rent[6] is paid, the tenant may continue to cultivate for many tens of years. It is customary for

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1. *No-chi*. 2. *Ike-chi*. 3. *Yeitai-gari*. 4. *Saku-nin*. 5. *Yu-go*. 6. *Abe* (put)-*kuchi* (mouth)-*mai* (rice), i.e. rice to eat, another euphemistic expression for a payment due.

successive sub-leases[1] to be made, without needing permission from the landlord, the latter looking to the original tenant in case of non-payment. The landlord has ordinarily the right to resume possession at any time; but he cannot easily do so where the tenant has changed sandy land[2] into good land[3] (which they call "grass-starting,") and his family has continued to cultivate it for three generations; in such cases the cropper has the privilege of buying the land at a price four-tenths lower than that at which it is offered to others.

In Idzumo *kuni*, Shimane *kori*, in leases of houses, a "house-contract-deed"[4] is usually required by the owner, with a surety or a witness. The contents of the instrument are not always the same, but it usually contains provisions about the deposit, the amount of rent[5] and the time of payment, with covenants to obey local regulations and to restore possession whenever the lessor desires, as well as an engagement by the surety. In Nōgi *kori*, the term in leases of cultivated land is usually one year, the tenant engaging to pay rent.[6] The amount of the rent is not exactly determinable, as the lessor reduces it wherever there is a failure of crops or an unusually poor yield. Rent is paid twice a year, in the 7th and the 12th months; but the parties may agree otherwise. Sometimes a lease is made for a term of years; and in that case the cropper may transfer his interest, though he is still responsible for the rent. The lessor may resume possession on non-payment, even though the term is not ended.

In Iwami *kuni*, Shima *kori*, the lessee, in leases of cultivated land, is termed "land-owner"[7] or "esquire,"[8] and the lessor, "petty-cropper"[9] or "low-cropper."[10] The amount of rent depends on the quality of the land, the

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1. *Ten-tai*. See *ante*, Echigo *kuni*, Kambara *kori*. 2. *Suna-chi*. 3. *Ryo-den*. 4. *Iye-uke-jō*. 5. *Ya-chin*. 6. *Kake-mai*. 7. *Ji-nushi*. 8. *Ji-tō*. 9. *Ko-saku-nin*. 10. *Ge-saku-nin*.

expense of cultivation, and the injuries arising from storm, floods, and drought. Written instruments, as well as sureties, are never employed. In Naka *kori*, the term in leases of cultivated land is usually one year, no written instrument being required. In leases of houses, the rent is paid, in towns, monthly; in villages, annually. Waste-land is sometimes leased to make bamboo forest, and the term is 10, 20, or even 80 years, written instruments being always required.

SANYODO. In Harima *kuni*, Shikito *kori*, no instrument of lease is used, and the term is one year. But an instrument is used when the resident of one village lets out the cultivation of land beionging to him in another village. This is called "long-cropping;" the cropper pays both taxes and incidental burdens, and may transfer his cropping right to another. In Mimasaka *kuni*, Nishihōjō *kori*, the lessor may not retake possession during the term, unless the tenant fails to pay rent.[1]

In Buzen *kuni*, Mino *kori*, the tenant, in leases of land, pay the local taxes,[2] and the lessor the rice-tax.[3]

In Bichū *kuni*, Kubaya *kori*, the right of a cropper may be sold, but the village-officers have nothing to do with such a sale. The reason is that it transfers merely the interest of the tenant, not the land itself, and hence it is a private affair between the buyer and seller. If the new cropper does not pay the rent[4] or injures the land, the owner may take away his interest.

In Bigo *kuni*, Fukatsu *kori*, an instrument of lease is used. One year is the term, beginning in the case of rice-field at the 5th month, and in the case of upland at the 10th month. When the landlord wishes to resume possession, he must give notice in the former case in the 1st month; in the latter case no notice is necessary. One who has

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1. *Ya-chin* (house-rent), *tokumai* (rice-rent of land). 2. *Nuki*. 3. *Nengu*. 4. *Saku-chin*.

cultivated for more than 15 years is called a "long-cropper," and he cannot easily be evicted. In Mitsuki *kori*, no instrument of lease is used and no term fixed, the landlord resuming possession at any time. After more than 10 years' cultivation the tenant becomes a "long-cropper" and the landlord cannot easily resume possession. Where waste land has been reclaimed and cultivated, the tenant may dispose of his cropping-right as he pleases, without giving notice to the landlord. Those who are croppers only and do not also possess some land of their own are called "floaters,"[1] and are placed in the lowest seats at the village assembly.

In Aki *kuni*, Numata and Aki *kori*, no instrument is used and no term is fixed; the contract is always a private oral one. When waste land has been reclaimed and cultivated, the term "long-cropping" is used, and the landlord cannot easily resume possession. The rights of house-renters are somewhat inferior to house-owners, as they may not wear full dress.

In Suwo *kuni*, Kyuka *kori*, the tenant is bound not to injure the land he cultivates; but if injury is caused by calamity of Heaven, the lessor must pay the expense of repairing the injury. In some cases cultivated land is leased in the ordinary way; this is called "low-cropping."[2] In others the cultivator works under the direction of the land-owner. There are two sorts of cultivated land, one producing two crops, barley and rice, the other a rice-crop only. The former is termed "land of two-seasons' planting,"[3] the latter "land of one season's planting."[4] The former is first quality[5] land, and is assessed to yield 4 bales [of rice] per *tan*; the latter is middle[6] or low[7]

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1. *Uke* (float)-*sugi* (pass over). 2. *Ge-saku*. Probably in the former case the rent was a fixed quantity of rice; in the latter the cultivator was given a share of the roduct. 3. *Niki-maki*. 4. *Ikki-maki*. 5. *Jō-tō*. 6. *Chū-tō*. 7. *Ge-tō*.

quality land, and yields 2½ or 3 bales per *tan*; these amounts the tenant must give to the landlord every year, the taxes being paid by the latter. Written instruments are never employed. The lessor may retake the land, even before the end of the term, if the proper amount of rice is not paid.

In Nagato *kuni*, Toyoda *kori*, there is both the ordinary tenancy and a kind called "extra-payment."[1] In the latter the tenant pays the Government rice-tax, as well as the rent,[2] the amount of the latter being fixed according to the nature of the land. Sometimes a surety is required (and in that case the term of lease is a fixed one), but no official sanction is needed and hence no written instrument is used. In leases of houses, the lessee makes an "advance-payment"[3] or deposit,[4] and on non-payment of rent, this sum is resorted to by the lessor, who usually retakes possession of the house. When the tenant removes, the advance is restored, but not with interest.

NANKAIDO. In Kii *kuni*, Nakusa and Abe *kori*, the cropper is called "low-cropper."[5] The contract is a private one, no instrument being employed and no term fixed. The cropper is at liberty to transfer his interest to another person, for a price called "produce money,"[6] and the consent of the landlord is not needed. If rent is not paid, the landlord looks to the cultivator for the time being[7] and distrains upon his interests. House-renters must give bond with a surety, and if the rent is in arrear, the landlord may have the tenant quit at any time. The house-renter's rights do not differ from those of the house-owner.

In Sanuki *kuni*, Kagawa *kori*, no instrument of lease is used and no term is fixed, and if the rent is paid, cultivation

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1. *Ka* (extra)-*chō* (manager). The above seems to be the literal rendering and to agree with the nature of the tenancy. In fact, however, *kachō* is synonymous with *tokumai* or rice-rent. See Uzen *kuni*, Okitama *kori*, *supra*. 2. *Toku-mai*. 3. *Maye-kin*. 4. *Shiki-kin*. 5. *Ge* (lowest, petty)-*saku-nin*. 6. *Toku-gin* 7. *Gensaku-suru-mono*.

may continue for an indefinite time. "Long-cropping" is not known. A person not owning land where he lives is not treated like an ordinary farmer and is called a "between-man."[1] The rights of a house-renter are inferior to those of a house-owner, and a law forbids his family to learn the polite accomplishments or to wear silk clothes. In Naka *kori*, no instrument of lease is used; the term is one year. If the rent is paid, cultivation may continue for an indefinite time; but there is no "long-cropping." For house-renters there must be a surety and a bond; and if rent is not paid, the landlord applies to the local officials and has the tenant leave. The house-renter's rights are regarded as inferior to those of the house-owner, and he is not chosen as a ward-official.

In Iyo *kuni*, Uwa *kori*, no instrument of lease is used. The term is 5 years, although the landlord may resume possession within that period on non-payment of rent. The rights of non-land-owning farmers and of house-renters are inferior; and the latter may not wear full dress. In Onsen *kori*, no instrument of lease is used and no term is fixed. If rent is not in arrears, cultivation may continue indefinitely. Where the tenant builds a house on the land, a supplementary[2] contract is sometimes made for it. House-renters and landless farmers are made to sit at the end-seats in the village assembly;[3] and the former are not allowed to wear the outer coat.[4]

In Tosa *kuni*, Kochi *kori*, the "original land"[5] is forbidden to be sold, but the same purpose is attained by making long leases. The lease is termed a "nineteen-crops [lease]," [6] the term being 20 years, and a deed is given

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1. *Modo*, a contraction of *ma-hito;* these persons ranked between the farmers and the outcasts (*hinin* and *yeta*). 2. *Hoshi*-(margin)-*kaki* (writing). 3. *Yori-ai*. 4. *Haori*. 5. *Honden*, the land brought into cultivation and registered before the Yamauchi family acceded (about 1602). 6. *Juku-saku*.

engaging the return of the land at the end of the term. The cropper is to give the land owner a rent termed "extra-produce,"[1] and is to pay the taxes and other expenses. He has the right to sublet to others and obtain a profit thereby without the consent of the land-owner. The latter is called "under-owner" and the farmer "upper-owner."[2] In Hata *kori*, the land-owner may retake possession on non-payment of rent. If no term is fixed, the owner may retake at any time.

SAIKAIDO. In Chikuzen *kuni*, Naka and Sagara *kori*, no instrument of lease is used, and, though no term is fixed, one year is the usual limit. The expression "long-cropping" is not used, and the landlord may resume possession at his pleasure, but he must give notice a year in advance.

In Chikugo *kuni*, Ikuiba *kori*, a written instrument is not commonly used in leases of realty.

In Buzen *kuni*, Kiku *kori*, no instrument of lease is used. One year is the term. The landlord may resume possession at any time, even though the tenant may have been in possession for many tens of years; but after the seed has been sown, the tenant cannot be evicted before the harvest. The expression "long-cropping" is not used. In Shimoge *kori*, no instrument of lease is used and no term is fixed. The

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1. *Ka-chi-shi*. 2. *Soko* (bottom)-*ji*-(land)-*mochi*, and *uwa* (upper, top)-*ji-mochi*. These terms differ slightly from those given by Mr. Grinnan (in his paper on "Feudal Land Tenure in Tosa," Trans. Asiat. Soc., 1892), which are *soko-zuchi-mochi* and *uwa-zuchi-mochi*. I cannot find that the written character for *ji* may legitimately be pronounced *tsuchi* (though the meaning of *ji* and *tsuchi* are almost identical); and the term probably varied in different places. Mr. Grinnan, however, says that the same character in Tosa served for both words. He adds that *nushi* was sometimes used for *mochi*, the full term being *mochi nushi*. Parts of the above passage in the original are quite obscure, and the whole paragraph gives an utterly insufficient view of Tosa leases, as may be seen by referring to Mr. Grinnan's paper.

law is that the cropper shall undertake the payment of taxes and incidental burdens. It was found that when the landlord paid these, he increased the rent, the cropper abandoned his occupation, and the land went to waste; so that since the period Anyei (1772-1781) the feudal lord has the taxes and burdens levied directly upon the croppers and annually inspects the quality of their production. (Since the Restoration many crafty ones among the the "long-croppers" have declared themselves to be the owners of their land and have procured judgments of the courts in their favor; and although there may have been some justice in their claims, their evidence of ownership was usually only this practice of paying taxes and incidental burdens.) A "direct-cropping"[1] after 20 years occupation, and a "different-cropping"[1] after 40 years, become a perpetual-cropping, and the landlord cannot resume possession at pleasure; so that most landlords resume possession at the end of 14 or 15 years and then let out the land again. In Miwa *kori*, no instrument of lease is used and no term is fixed. Cropping is called "temporary-possession."[2] The cropper undertakes in his own name the payment of taxes and incidental burdens. The expression "long-cropping" is not used, and the landlord has the right to resume possession at pleasure, no matter how many years of tenancy have lapsed.

In Hizen *kuni*, Sanuki *kori*, no instrument of lease is used and no term is fixed; nor is "long-cropping" known. If the possession of the land is to be resumed, the landlord must give one year's notice.

In Higo *kuni*, Aso *kori*, where an instrument has not been made out, and the cropper fails to pay the rent,[3] the owner may retake possession. There is a sort of cropping called "undertaking the assessment,"[4] in which the cultivator

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1. *Jiki-kosaku*, *betsu-kosaku*. See Shinano *kuni*, *supra*, and the chapter on "Pledge and Hypothec." 2. *Kari-data*. 3. *Tokumai*. 4. *Taka-iri*.

pays the Government rice-tax[1] and local expenses, as well as a rent.[2]

In Hyuga *kuni*, Usuki *kori*, no term is fixed and no instrument of lease is used except for cropping in another village. If cultivation continues for more than 10 years, the rights of "long-cropping" are obtained; and, provided the rent be paid, the landlord can resume possession only for the purpose of cultivating the land himself, and not to let it out again to another person. But although the term "long-cropping" is used, the cropper cannot transfer his interest to another.

In Iki *kuni*, Ishida *kori*, no instrument of lease is used and no term is fixed. Sometimes, if both parties are satisfied, cultivation continues for many tens of years; but the landlord has the right to resume possession at any time. Custom, however, forbids him, if the seed has been sown, to evict until after the harvest.

In Tsushima *kuni*, Shimoagata *kori*, when the number of cultivators[3] on the public land diminishes, the headman[4] has the people choose and gives the elected one an officially-sealed certificate and has him cultivate the unused portion. This is called "temporary-cultivation."[5] If the taxes fall in arrear, the land is immediately taken away and given to another. Where a person agrees to cultivate land on behalf of the owner, he is called a cropper; the landlord may resume possession at any time, even though such cultivation may have gone on for many tens of years.

2.—PERSONAL PROPERTY.[6]

TOKAIDO. In Kai *kuni*, Yamanashi *kori*, in loans of rice or other grain, a value is fixed on, and either the price

1. *Nengu*. 2. *Tokumai*. 3. *Tsukuri-nushi*. 4. *Gichi-yaku* (ordering-officer). 5. *Ima-saku*. 6. This section is one of those in

or corn of an equivalent value is returned, interest being added. On a principal of 30 *yen*, the interest is 25 *sen* per month.

In Musashi *kuni*, Toyoshima *kori*, where clothing or bedding is lent, the term is usually 3 days; as to other articles there is no general rule.

TOSANDO. In Rikuzen *kuni*, Toda *kori*, in the hiring of horses from dealers, the hirer of a 3-year-old horse will deposit, say, 3 *yen*, if the value of the horse is 10 *yen*, with the dealer, and when the horse is 5 years old, he is returned to the dealer, and the latter restores the deposit. This is an old and popular custom, because both parties profit by the arrangement.[1] If a hired horse or cow bears a foal or a calf, the latter is the property of the owner; but it is usually agreed that if during the term there are 2 or 3 foals or calves, the hirer shall receive the gift of the dam. In loans of grain and money, the term is usually one year, ending with the 12th month.

In Uzen *kuni*, Okitama *kori*, in the hiring of cattle or horses, if the animal dies by sickness or violent accident, the hirer does not pay compensation. But this rule applies only where the lender is a dealer. Where he is an ordinary farmer or other outsider,[2] the hirer must make compensation at a later time by means of manual services. If the animal dies by sickness or violent accident, the hirer does not compensate; but it is otherwise if the death is due to the hirer's intention.[3]

HOKUROKUDO. In Kaga *kuni*, Kawakita *kori*, if a horse is lent during the cultivating season, the term "season

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which the compiler has failed to obtain materials at all satisfactory. Much must be allowed, however, for the probable dearth of definite customs on this subject. Life in old Japan was not characterized by such an abundance of personalty, especially of the sort likely to be borrowed for hire, as in the West. The law of personalty is chiefly contained in the subjects of Sale and Pledge. 1. The lender getting the feed of the horse, the hirer the use. 2. *Shirōtō*. 3. Just how the two rules of lending differ is not clear.

loan"[1] is used; if during the winter, "winter-feed loan," this latter being made in order to feed the animal during the winter. Sometimes a 2-year-old horse is lent, to be returned when he is 3 years old. The borrower profits by the manure, and at the same time feeds the horse, so that when he is returned the lender profits by the increase in its value. In Ishikawa *kori*, there is a custom of rice-lending called "6-*to*-loan,"[2] by which 5 *to* are lent and 6 *to* are returned in the autumn of the ensuing year.

SANINDO. In Idzumo *kuni*, Shimane *kori*, clothes and furniture are sometimes lent on an arrangement called "exchange."[3] Money is borrowed and the articles are given in exchange as security, a date being fixed for repayment. If at that time the debtor fails to pay principal and interest, the creditor may sell the articles.

SAIKAIDO. In Chikugo *kuni*, Mitsuma *kori*, a written instrument is required in loans of money, but not in loans of other articles.

3.—PERSONAL SERVICES.[4]

TOKAIDO. In Musashi *kuni*, Toyoshima *kori*, the hiring-out of apprentices,[5] personal services is practiced among masters,[6] when a master-artisan[7] has a great deal of work placed in his hands and, needing extra apprentices, hires temporarily the apprentices of some other master; and a reasonable wage is paid. But no apprentice who has completed his term[8] of apprenticeship and has a separate establishment can be so hired out by his master without his consent.

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1. *Saigetsu-kashi*. *Saigetsu* (year-month) conveys the idea of a period of time, long rather than short. 2. *Roku-to-kashi*. 3. *Kawa-se-ire*. 4. *Jin-ryoku*. Here again, meagre materials are offered. The whole subject of carriers, as to which many customs prevailed, has been left practically untouched. 5. *Deshi*. 6. *Oya* (parent)-*kata* (person). 7. *Tō-ryo*. *Tō* is the ridge-pole of a roof, *ryo*, the lesser timbers; *tō-ryo* has figuratively come to mean "master-artisan." 8. *Nenki*.

TOSANDO. In Shinano *kuni*, Takai *kori*, in hirings for more than one year, a written instrument must be made out. The wages of artisans are paid twice yearly, in July and December. In Saku *kori*, in the season of cultivation, farmers hire themselves out to each other in turn. This is termed "mutuality,"[1] and the wages are those of ordinary servants,[2] the same rate being taken in every case. But a man's labor for 1 day must be repaid by 1½ days of a woman's labor; and 1 day's use of a horse is equivalent to 2 days of a man's labor. If an artisan is given his wages in advance, and he delays the performance of the work, he must pay interest on the money received or give extra labor; on the other hand, if the employer does not pay the wages when due, he must add interest.

In Uzen *kuni*, Okitama *kori*, where a hired man runs away with his master's money or with advance-wages, the employment-office[4] from which he was hired is not responsible.

In Rikuzen *kuni*, Toda *kori*, when a farm-laborer[5] is hired, the time is usually 3 years, his wages being paid in advance, and a written instrument being given. For woman-laborers,[6] the term is usually 1 month or 2 or 3 weeks, no written instrument or surety being given. In Ojika *kori*, there is no regular term for the hiring of sailors[7] or boat-cooks, as the engagement is usually for the time of the voyage, nor is there a regular rate of wages. If their belongings are lost during the voyage by calamity of Heaven, the ship-owner is responsible. He is bound to pay wages and furnish food, even while the ship is touching at a port. Men to man a fishing-boat[8] are hired for a single season (that is, for the bonito-catching season) from April 1st to July. Each man receives, beside his wages, one-tenth or one-fifth the price of the fish caught by him.

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1. *Yui*. 2. *Hōkōnin*. 3. *Iye-nushi*. 4. *Yosei-yado*. 5. *Saku-otoko*. 6. *Saku-onna*. 7. *Sendo*. 8. *Gyo* (fishing)-*fu* (man).

HOKUROKUDO. In Kaga *kuni*, Nomi *kori*, the term for hiring sailors is from the departure to the return of the ship.

In Echū *kuni*, Nikawa *kori*, laborers are commonly hired for house-building, roof-laying, and rice-planting, and are termed "help."[1] In Imizu *kori*, a person hired to carry is bound to carry carefully, but is not liable for injury happening through calamity of Heaven.

SANINDO. In Izumo *kuni*, Nōgi *kori*, no "place-filler"[2] exists for the hiring of servants[3] and the master hires them directly. But there is a person called "parent"[4] who acts as surety for such persons and through whose hands the wages[5] are paid twice a year. No regular custom exists as to the hiring of artisans; the wages are reckoned at so many *sen* a day, and not by the month.

SANYODO. In Suwo *kuni*, Yoshihiki *kori*, there is a person in towns called "place-filler,"[2] who recommends servants for positions. The term of service for women hired through him is usually half a year; as to men there is no general rule, but the wages are reckoned at so many *yen* per year. No instrument of suretyship[6] is required, and if the servant borrows his salary in advance and then runs away, the master cannot recover the money from the "place-filler." The wages of artisans are reckoned at so many *sen* a day.

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1. *Gō* (help)-*ryoku* (power). 2. *Kuchi* (opening, hence, empty place or position)-*ire* (put in)-*nin* (person); employment-office. 3. *Boku* (man-servant)-*hi* (maid-servant). 4. *Oya* (parent)-*bun* (part, position. 5. *Kyu-ryo*. 6. *Uke-shosho*.

CHAPTER V.

DEPOSIT.[1]

In contracts of deposit the depositor[2] usually selects as depositary[3] some trustworthy person among his relations or friends, so that the interchange of instruments is rare, and there are no special customs on the subject. But it is customary to favor [the claim arising from] the receiving of money on deposit[4] more than the loan of a thing for use,[5] whether interest on the money is paid or not, and hence, although it be lost by a calamity of Heaven,[6] the obligation of returning it is not affected. Variations from these principles, are as follows :

KINAI. In Yamato *kuni*, Soyegami *kori*, when the harvesting in the autumn is finished, the farmers sometimes entrust their cattle to those who live in the hills. The bailee[3] uses them for his own needs and obtains the benefit of the manure, and no charge is made, [because the bailor has the benefit of the keep of the cattle during the winter]. If by calamity of Heaven the cattle are destroyed or injured, the bailee is not liable ; if by his negligence, he must make compensation, but in this case a compromise is usually made.

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1. *Futaku.* 2. *Azuke-nushi.* 3. *Azukari-nushi.* *Azukeru* signifies actively the making of a deposit ; *azukaru* signifies passively the receiving of a deposit. The idea of a trust or confidence is also implied in both words. 4. *Azukari-kin.* 5. *Shaku-yo-butsu.* 6. *Ten-sai.*

In Settsu *kuni*, Yabe *kori*, there has been no such expression as "loan of money for use,"[1] the only term used for all such transactions being "receiving money on deposit."[2] Interest is not stipulated, in the true deposit of money, and the obligation is to repay the sum without fail, even though it be lost in consequence of a calamity of Heaven.

TOKAIDO. In Iga *kuni*, Abe *kori*, in the case of money received on deposit, the obligation is considered much heavier than in the case of loan,[3] and the sum must be repaid even though it be really lost.

In Ise *kuni*, Wataraye *kori*, no term "money loan"[4] is in use, all such transactions being known as "receiving money on deposit;" so that [no distinction is made and] all disputes are in fact decided according to the rules of deposit.[5]

In Mikawa *kuni*, Atsumi *kori*, in a deposit of rice, the depositary receives a storage-fee;[6] in a deposit of money, the depositary pays a low interest. If the object of the deposit is lost through some calamity, the depositary need not make good[7] the loss, in case of rice; but he must, if it is money.

In Idzu *kuni*, Takata *kori*, if an object received on deposit,[8] whatever it may be, is destroyed, the depositary must make good[7] the loss.

In Sagami *kuni*, Ashigara *kori*, when an object received on deposit, for which a storage-fee[9] is paid, is lost through a calamity of Heaven, the depositary does not make it

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1. *Shaku* (borrow)-*yō* (use)-*kin*. 2. *Adzukari-kin*. 3. *Taishaku* 4. *Kinsen* (lit. gold and copper)-*taishaku*. 5. I. e. even when the transaction of deposit is really a loan, the responsibility of repaymen is absolute. See the legal precedents in Part III for the difference in the treatment of deposits and loans. 6. *Kura* (storehouse)-*shiki* (put)-*kin*. 7. *Bensho*. 8. *Adzukari-mono*. 9. *Kura-shiki-dai* (price)-*kin* (money).

good. But as money received on deposit[1] is applied to his use, he must repay it without fail, even though it be lost by fire or theft.

In Kai *kuni*, Yamanashi *kori*, when an article is deposited in a storehouse, a storage-fee is paid, and the depositary is bound to keep the article safely.

TOSANDO. In Shinano *kuni*, Saku *kori*, it is customary to deposit the funds of an inheritance,[2] during the heir's minority, with some adult, and funds for temple-repair[3] with the chief-parishioner;[4] the savings of old men are also deposited. Low interest is charged in these cases, and a written instrument is seldom given. The depositary of such funds[5] lends out at a higher interest, paying only the lower interest to the depositor; and if the former becomes insolvent, the fund is not taken by the creditors. In Minochi *kori*, the depositary must pay if the article deposited is lost in any way whatever.

In Rikuzen *kuni*, Miyagi *kori*, where goods are deposited with a wholesale house,[6] a written document, with surety, is given. The depositor pays a deposit-fee,[7] and cannot get back the goods until it is paid. The depositary is liable, if the goods are lost or destroyed, even by calamity of Heaven.

In Uzen *kuni*, Okitama *kori*, where goods are deposited, a storage-fee[8] is paid; and the depository is not liable even though the goods are injured by fire or insects or are lost by theft or robbery.[9] If an entire storehouse is hired, the key is given to the hirer.

HOKUROKUDO. In Kaga *kuni*, Ishikawa *kori*, the depositary, if he charges for storage, must keep the goods very carefully.[10] He is not liable for destruction caused by calamity of Heaven; but is liable if it is due to his fault.[11]

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1. *Adzukari-kin.* 2. *Sozoku-kin.* 3. *Shufuku-kin.* 4. *Dan-chō.* 5. *Adzukari-kin.* 6. *Toiya.* 7. *Adzukari-chin.* 8. *Kurashiki-ryo.* 9. See Note 3, p. 88. 10. *Yoku* (well) *hozen* (safe-perfect)-*suru* (do). 11. *Ayamachi.*

When a wholesale house or a warehouse-keeper accepts goods on deposit for compensation, the obligation arises to keep safely.[1] In the case of the shipping-and-wholesale houses[2] of the seaports, the customary obligation is to make compensation if the article received on deposit is destroyed by fire caused by the bailee's fault, or is lost by theft or robbery,[3] or is damaged by rain-leakage due to the non-repair of the storehouse.

In Noto *kuni*, Hōshi *kori*, when a mare is bailed without charge by the depositary, the latter may make use of her in his cultivation, and also receives half the value of a foal, if any is born during the term. If the animal bailed dies, the depositor bears the loss. In Hagui *kori*, the depositary is bound to keep the article very carefully,[4] because he receives a fee[5] for his services. If it is destroyed otherwise than by calamity of Heaven, he must make compensation.

In Echū *kuni*, Tonami *kori*, when rice or other grain is deposited in a storehouse, the usual period is from the time of the harvesting to the 7th month of the succeeding year; and the storage-fee is at the rate of 2 *sho* per *koku*.[6] The rate is the same even though the owner withdraws the deposit before the end of the term; and if the deposit continues beyond the term, 1 *sho* per *koku* is added to the charge.

In Echigo *kuni*, Kambara *kori*, when rice or other grain is sold, but is kept on deposit by the seller, the time is fixed, a written document is given, and the depositary is liable if the goods are destroyed by fire or by rats, or if they are lost by theft or robbery. But if the depositor fails to

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1. *Hozen suru.* 2. *Funa-doiya.* These *toiya* apparently did much of their business on commission; but the term "wholesale house" has been preserved in order to distinguish them from *nakagai*, brokers or ordinary commission houses. 3. *To-nan;* this term does not distinguish between theft and robbery. 4. *Moppara* (paramount, most important) *hozen suru.* 5. *Tesu-ryo* (lit. trouble-money). 6. 2 per cent.

take away the goods at the end of the term, and they are afterwards destroyed, the loss is his.

SANINDO. In Idzumo *kuni*, Shimane *kori*, where an entire storehouse[1] is hired, a term is fixed, a written instrument given, and a storage-fee paid; and when the key is handed over, the storehouse-owner has no further responsibility. But where only a few bales of grain or casks of wine or other articles are deposited, the key is not handed over, and so the depositary is under the obligation of keeping the goods carefully.[2] In Nogi *kori*, when the depositary receives a fee, he is bound to keep[3] carefully,[4] and is liable if the article is lost.

In Iwami *kuni*, Shima *kori*, a storage-fee is paid, and the depositary is bound to keep carefully.[5] If the goods are lost by theft or roberry or are destroyed by fire, the depositary is liable; if by any other calamity of Heaven, the depositor loses.

SANYODO. In Harima *kuni*, Shikito and Sayo *kori*, it is considered that a much heavier obligation attends money received on deposit than attends money loaned for use,[6] and there is an old law that when a judgment is rendered [in bankruptcy] the latter[7] shall be ordered to be paid off first.

In Suwo *kuni*, Tsuno *kori*, where a whole storehouse is hired, a charge is made, and the key is handed to the depositor, who is bound to keep the storehouse carefully.[8]

In Bizen *kuni*, Mino *kori*, when goods deposited are lost by theft or robbery, the depositary must pay at least some portion of their value; but when they are destroyed by fire or injured by rats, the depositor bears the loss.

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1. *Dōzō*. 2. *Tori-shimari* (exactly, strictly). 3. *Mamori-oki* (put under watch). 4. *Chū-i*. 5. *Kwan-shu* (superintend, guard). 6. *Shaku-yo-kin*. 7. This seems clearly to be an error; read "the former." 8. *Kwan-shu* (take care of—guard). This *kwan* differs slightly from the *kwan* in Shima *kuni*, *supra*.

NANKAIDO. In Sanuki *kuni*, Naka *kori*, it is considered that a much heavier obligation attends money received on deposit than attends money loaned for use, and it is the custom to require its repayment, even when lost by a calamity of Heaven.

CHAPTER VI.

HYPOTHEC[1] AND PLEDGE.[2]

I.—REAL PROPERTY.

KINAI. In Yamato *kuni*, Kuse *kori*, land is not pledged but is placed in hypothec. The transaction is nominally a transfer of the property to the creditor, the instrument being sealed and recorded by the local officials, and the whole process being known as "provisional alteration."[3]

1. *Kaki-ire* (written-entry). The original form of the term seems to have been *kakiire-shichi*, that is, a security created merely by a deed or by an entry in a register. 2. *Shichi* (pledge, also, security in general)-*ire* (put). *Teito*, a term sometimes occurring, seems usually to be a term meaning "lien" or "security" in general. But sometimes it is equivalent to *kaki-ire*. *Ten* has a similar meaning. The word "mortgage" will here be employed to include both pledge and hypothec, where the original seems to indicate no distinction. The word "hypothec" is here employed in its ordinary sense as signifying an interest in land given by the debtor to the creditor by way of security, the debtor retaining possession of the property, real or personal. The word "pledge" is used as signifying a similar interest involving the transfer of possession to the creditor, whether the property be real or personal. These terms have been employed because they seem to correspond to the usual content of the terms "*kaki-ire*" and "*shichi-ire*," and because no literal rendering of these would convey their meaning adequately. It is true that "pledge" is usually applied in English law to personal property only. But there is no reason why it should not be employed for realty also. The term "nantissement" is so used in French law. In the Japanese Draft Civil Code (Art. 1121) M. Boissonade has employed the terms "nantissement mobilier" and "nantissement immobilier." 3. *Kari-kakitsuke-kaye.*

In Settsu *kuni*, Yabe *kori*, the term "hypothec," in towns and villages alike, is unknown, and all such transactions are called "pledge." When cultivated land is pledged, the taxes and sundry charges are nominally paid by the creditor, the debtor in name becoming the creditor's tenant. In fact, however, the debtor merely pays the annual interest agreed on, and at the same time is responsible for taxes. The usual term is one year, but the instrument remains valid for 10 years. If at the end of that time the debt remains unpaid, the property becomes the creditor's forever. In towns the transaction is similar, the creditor nominally but the debtor actually paying the town charges. If the land is not redeemed, within the period specified, it becomes the creditor's forever. As a proof that the land has not already been mortgaged, the ward-elder, in towns, and the headman, in villages, seals the instrument.

TOSANDO. In Iga *kuni*, Abe *kori*, in towns, when the debtor who has created a lien[1] on his land is not able to pay at the appointed time, the local officials usually constrain [the debtor] to renew the instrument. If he refuses, they proceed to sell the land, sometimes without even informing the creditor.[2] On the occasion of a renewal, the officials take 5 one-thousandths of the loan as a fee. In villages real property is mortgaged under the name of a sale, called "sale with redemption on repayment within a term of years."[3] The name of the owner in the land-register is not altered; but a note is made of the mortgage. The taxes and sundry charges are paid by the owner, who also pays interest on his debt. If at the expiration of the term, which usually does not exceed 10 years, he is not able to discharge the debt, the instrument is commonly renewed.

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1. *Teito.* 2. This procedure is unexplainable; but the passage cannot be interpreted in any other way. 3. *Moto-ukeryo nannen-kagiri-uriwatashi.*

In Ise *kuni*, Ano *kori*, there is no pledge of real property. Where in villages one borrows money by creating a lien[1] on realty, he makes an instrument in which are entered[2] the assessed production, area, and name[3] of the plot. This is signed and sealed by the witnesses and the company-chief and indorsed by the headman[4] and elder. In case of default, the land is sold for a period of years;[5] for there is no permanent forfeiture.[6] In towns the instrument is signed by the [debtor's] company and indorsed by the headman.[7] On default the property is sold and the debt paid from the proceeds. The indorsement of the officials merely attests the non-existence of prior mortgages and has no effect as regards any controversy between the debtor and the creditor.

In Shima *kuni*, Toshi *kori*, the hypothec is signed and sealed by the debtor's relatives and company; but as the headman never does so, it often happens that land is twice mortgaged. If the debtor becomes bankrupt, the mortgage creditor has no preference over others, the proceeds of the property being distributed proportionately. In former times it was considered a great disgrace to have to hypothecate one's land.

In Owari *kuni*, Aichi *kori*, in towns, when residence-land is hypothecated,[8] the instrument is signed and sealed by the relatives and company [of the debtor] and by the local officials, It contains the matters of description as given in the house-register, and a clause that on default of the mortgagor the land shall be transferred in perpetuity to

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1. *Teito*. 2. *Kaki-ire*. 3. *Azana*. See note to Kawachi *kuni*, in the chapter on "Sales." 4. *Shoya*. 5. *Nenki-uriwatashi*. 6. *Nagare* (flow, go adrift, hence, be forfeited). 7. *Nanushi*. 8. *Kaki-ire-shichi*. Here we have probably the original form of the term *kakiire*. Though the hypothec was at first called a "pledge by written entry," the first part of the expression came into use as implying the whole, and thus "*kakiire*" became opposed to "*shichi*" or "*shichi-ire*."

the mortgagee. But as a dispute and thus a lawsuit usually arises between debtor and creditor, on the occasion of a default, the land is in fact not transferred until after the judgment in the lawsuit. In villages the instrument is signed and sealed by the [debtor's] company and the headman, and contains the matters of description as given in the land-register. If a default occurs, the parties usually come to an understanding, and the creditor allows a further delay of from 3 to 5 years; so that the matter is seldom brought into court.

In Mikawa *kuni*, Atsumi *kori*, land is ordinarily subjected to a lien[1] by making an entry[2] of the production, area, and name of the land [in the land-register]. A pledge is accomplished by the transaction[3] referred to in the chapter on Sales. The instrument is signed and sealed, in villages, by the relatives and company of the debtor and the headman, in towns by the relatives and a representative[4] of the company and by the headman. The chief of the company[5] uses his official seal, as the headman does, and not his own principal-seal.[6] In Nukata *kori*, real property is put in hypothec only, not in pledge. The instrument, in towns, is signed and sealed by the relatives of the debtor and by the headman,[7] and must contain a statement of the depth and frontage of the premises. In villages it bears the signatures and seals of the debtor's relatives and company and the official seal of the headman,[7] and contains a statement of the production, area, and name of the land. The headman usually declines to sign a mortgage where the creditor is in another ward. But in the case of "ward-money,"[8] a loan is sometimes made to another ward and secured by a hypothec of residence-land.

1. *Teito*. 2. *Kakitori*. 3. *Kanpo-uri*. Probably the "sale of patrimony" there mentioned under Mikawa *kuni*. But this term is not there used and its significance is obscure. 4. *Soda*. 5. *Kumi-gashira*.—i. e. the *sodai* just mentioned. 6. *Jitsu-in*. 7. *Shoya*. 8. *Machi-kin*, money lent to a ward (or village) by the feudal lord. See the chapter on Bankruptcy (Mikawa *kuni*, Mikata *kori*).

In Musashi *kuni*, Toyoshima *kori*, a transaction known as "house-pledge"[1] is effected by depositing the title-deed[2] with the creditor or the headman[3] during the term of the loan, the deed in the latter case being enclosed by the debtor in a sealed envelope, and the instrument of debt being in both cases countersealed by the headman and the debtor's company. Another kind of security is the "title-deed deposit,"[4] the instrument of debt being executed by the parties only and deposited with the creditor and not countersealed by the headman or company. But in this case, if a suit arises, the debt is not recognized by the court as having any preference over others.

In Totomi *kuni*, Sano *kori*, in case of a pledge, the land is delivered to the creditor, who pays all taxes and sundry charges, the land being called "good-will land."[5] The relatives, company, and village officials seal the instrument, which contains the ordinary description. This, with an additional document bearing the seals of the village officials, is deposited with the mortgagee. The term is usually 5, 7, or 10 years, a short one being preferred. If a default occurs, the property is forfeited, and the name of the owner in the register is changed. In hypothecs the instrument is executed by the parties only, and bears no seal of the officials. In Shikichi *kori*, the pledge is usually for a term of 10 years, and on default the land would strictly become forfeit and the owner's name be altered in the register. But this extreme result is seldom reached and another term of 10 years is usually granted. For this reason a farmer having large possessions consisting of mortgage-lands is looked down upon as not owning a family

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1. *Iye-jichi*. 2. *Kō* (buy and sell)-*kenjo* (instrument); it served as a certificate of title in transfers and was handed over with the property. 3. *Nanushi*. 4. *Ko-kenjo-adzuke*. 5. *Mainai* (something given as a favor on request) *chi*.

patrimony,[1] because his ownership is not complete. Besides the pledge for a definite term, there is a "pay-when I-have-money deed,"[2] by which it is stipulated that the debtor may redeem whenever he obtains the money. The hypothec is of the ordinary kind and bears the seals of relatives, company and headman. A mortgage-creditor of course has a preferred claim in case of bankruptcy.

In Kai *kuni*, Yamanashi *kori*, in a pledge, the instrument of debt[3] is witnessed and then taken to the headman, who places a divided seal[4] upon the instrument and the land-register, and then attests by indorsement the genuineness of the contract. But sometimes this instrument is delivered directly to the creditor after being witnessed. The creditor is always liable for the taxes and sundry charges. The period of payment varies. Sometimes it is agreed that redemption may take place at any time during the term, but not thereafter; sometimes that redemption may be made after the expiration of the term. In Kamakura *kori*, the usual period is 10 years. But a second 10 years is added, if the debtor desires. On default at the end of the 20 years, the land is forfeited and the creditor becomes absolute owner. In another kind of pledge, called "happen-to-have pledge,"[6] the debtor may redeem at any time before 10 years have passed, but not thereafter. In the hypothec the details vary greatly, and depend entirely on the understanding of the parties.

In Idzu *kuni*, Takata *kori*, in a pledge, the term is always fixed. The pledgee pays all taxes and sundry charges, and his name is substituted in the land-register as owner. In a hypothec there is merely a deed given, and the village officials take no part in the transaction. If hypothecated

1. *Myo* (name, family)-*shiki* (bottom, foundation)-*chi* (land). This seems the best interpretation of this troublesome phrase. 2. *Kane* (money)-*ari* (is, comes) *shomon*. 3. *Kashikin shosho*. 4. *Wari-in*,—part of the impression appearing on one document and part on another. 5. *Kin* (money)-*shu* (master). 6. *Ariai-shichi*.

land deteriorates in value, other land must be substituted if the creditor requires. If a default occurs, the land is put in pledge with the creditor. As perpetual sales are prohibited, transactions of sale are called "pledges for a fixed term." The usual term is 10 years, and forfeiture ensues on default. But in case of forest-land, 24 or 25 years is the usual term; and if redemption is made after that time, the mortgagee first cuts down all the timber. The reason for such an extension of the ordinary period is that, while cultivated land yields annual returns, a forest, when cut, requires 7 or 8 years to attain a growth serviceable for fuel and other purposes, and thus the creditor is able to cut the timber not more than 3 times during the whole term.

In Hitachi *kuni*, Ibaraki *kori*, the local officials do not attest any mortgage, unless it is given for arrears of taxes.

TOSANDO. In Omi *kuni*, Shiga *kori*, there is no pledge, properly so-called, of real property, the hypothec alone being used. However, there is sometimes found in villages a kind of land called "term-land";[1] in this case the debtor has transferred the land for a limited period to the creditor, who takes all the profits except an amount equivalent to the taxes, and this he gives to the debtor for payment to the collector. In Inugami *kori*, mortgages are usually made by way of hypothec.[2] But in some villages land is transferred to a pledgee for a limited period, and he pays the taxes and other charges.

In Hida *kuni*, Ono *kori*, all mortgages are attested by the officers of the ward or village; the term usually does not exceed 10 years. The law is that the creditor shall cultivate the land, either himself or by tenants, and pay all taxes and sundry burdens. But the law is not strictly observed, and although every mortgage is described in the document as a pledge, the debtor ordinarily retains possession and cultivates it, paying the taxes and sundry charges, and

1. *Nengen-da.* 2. *Kakiire* or *teito.*

also the annual interest—in rice or money—to the creditor. At the end of the term the debtor may redeem[1] by paying the principal.[2] A different sort of transaction, called "part forfeiture,"[3] is as follows. Where a debtor has hypothecated his land and defaults in payment at the end of the term, the creditor assumes possession and undertakes the payment of taxes and charges, while the debtor on his part signs a document guaranteeing that neither his relatives nor others shall make any claim against the creditor; but it is to be noticed that the name of the owner is not altered in the land-register. If after an agreed period the arrears[4] are discharged, the owner[5] is at liberty to do as he pleases with his land.

In Shinano *kuni*, Hanu *kori*, the instrument, after execution and attestation, is delivered to the officer of the village, who compares the description in the deed with that in the land register and then certifies to its correctness. The creditor owns the land during the term, and out of the profits pays the taxes and sundry charges. The debtor may redeem at the expiration of the term and may have the deed also returned to him; but if he defaults, forfeiture usually ensues. In Ogata *kori*, where the term of pledge is fixed, the debtor cannot redeem before its expiration, nor can he do so after a default, if a stipulation for forfeiture has been made in the deed. If no term is fixed, the debtor may redeem whenever he is able, though not after 10 years have elapsed. In Saku *kori*, in former times, hypothecs and pledges were sometimes made for terms as long as 15 or even 20 years, and the instrument was not attested by the village officers. But during the period Kyoho (1716-1736) the practice arose of having such an attestation; and after Kwansei (1789-1801) and Bunkwa (1804-1818) the term ordinarily was from 5 to 10 years only. During Kayei (1848-1854) and Ansei

1. The receiver makes take back. 2. [illegible] original [illegible] money. 3. [illegible]. 4. [illegible]. 5. [illegible].

(1854-1860) it was still shorter and varied from 3 to 5 years. The customary contents of a deed of pledge are as follows: A recital that the description of the plot by area, grade of soil, and name, agrees with that contained in the land-register; a recital that a specified sum of money has been borrowed for a specified term of years; a stipulation that the property may be redeemed on the expiration of the term by paying the amount of the debt; and a stipulation that all taxes and charges shall be paid by the creditor during the term. If the description of the pieces of land takes up more than one page, it is put on a separate paper, which is also attested by the village officer and is duly referred to in the principal instrument. Where the requirements as to attestation or length of term are transgressed or the description does not correspond with the register, no action will be entertained upon the instrument. Where the headman himself is pledgor,[1] the attestation must be by another headman or by the company-chief and the farmers' representative. Any provision that, while the pledgee[2] shall cultivate the land and take the profits, the pledgor shall nevertheless pay the taxes and render the local services; or that the pledgor who attorns as tenant[3] of the pledgee shall render the local services; or that the pledgor shall attorn as tenant[3] of half the pledged land and shall pay and render taxes and services upon it; or, finally, that an undivided piece of land shall be divided for the purpose of pledging, is unlawful. In Minochi *kori*, the usual term is 5 years, and the instrument is attested and indorsed by the village officers. If a default occurs, the debtor, even though the property be insufficient to discharge the debt, may claim from the pledgee the payment of a sum called "tears-money,"[4] equal to one, three,

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1. *Shichi-oki* (put)-*nushi* (master, person). 2. *Shichi-tori* (take)-*nushi*. 3. *Jiki* (near, next)-*kosaku*. 4. *Namida-kin*,—because it was originally a sum charitably granted in answer to the tearful supplications of the debtor.

or five hundredths of the principal; and this sum the debtor deposits for the benefit either of his town ward [1] or of his successor.[2] Moreover a pledge of cultivated land may be redeemed at any time within 10 years after payment is due.

In Shimotsuke *kuni*, Tsuruga *kori*, the longest period for hypothec is 10 years; on default, the ownership is transferred. Cultivated land in the neighborhood of Nikko yields so little return that no one will take it as security, forest-land alone being taken in mortgage.

In Iwaki *kuni*, Shirakawa *kori*, in towns, mortgaged land is never forfeited to the creditor. If a default occurs, the land is sold and the debt paid out of the proceeds. Hypothec is the only form of security used.

In Iwashiro *kuni*, Aidzu *kori*, in towns, if a default occurs in a hypothec,[3] a report is made to the local office, and the land is publicly offered for sale for 30 days.[4] If no purchaser is found, the land is sold at auction,[5] the creditor taking the proceeds, and handing the surplus, if any, to the debtor. If no bid is received, the land is transferred to the creditor. Where land is pledged, it can be redeemed at any time, no matter how long after the pledge was made.

In Rikuzen *kuni*, Miyagi *kori*, there has never been any distinction between "*kakiire-shichi*" and "*teito*," [and the latter is the term in general use for a hypothec]. The debtor and creditor, after agreeing on the term, draw up the instrument; the debtor seals; his relatives and company, with the headman, counter-seal; and it is then delivered to the creditor. In Toda *kori*, a pledge of land (especially of residence-land) is called "private arrangement." [6] There are

1. *Machi-kin*. 2. *Sozoku-kin*. 3. *Kakiire* or *teito*. 4. Apparently at a stated price, probably the amount of the debt. 5. *Ire* (put in)-*fuda* (card); the bidder writes on a card the amount of his bid, and either puts it in a receptacle or sends it by messenger, the highest bid being usually accepted. But the process differs from an auction in that the seller merely announces a willingness to sell and bids may be sent in at any time. 6. *Nai-shimatsu* (private-arrangement). The force of the *nai* is not clear.

two sorts, one is the "private arrangement" properly so called, the other is "pledge-land private arrangement." The former is in effect a sale.[1] The transaction is as follows. A petition for permission to sell, sealed by the debtor and creditor, and countersealed by the relatives and company and by the headman,[2] is presented to the chief-headman,[3] who counterseals and forwards it to the feudal deputy.[4] The latter transmits it to the district-deputy,[5] whose sanction ends the process. In the "pledged-land arrangement" the debtor seals the instrument, obtains the counterseals of his relatives and company and of the company-chief and headman,[2] and delivers it to the creditor. After a foreclosure, a petition asking transfer of the estate[6] is made, in the same manner as above described.

In Uzen *kuni*, Okitama *kori*, in a hypothec, even though redemption is not made within the agreed period, the land does not become forfeit provided the interest is paid. In Tagawa *kori*, an instrument of hypothec is generally attested by the ward or village officers, but sometimes by only the relatives of the debtor. But an instrument of pledge must always be attested by the ward or village officials.

In Ugo *kuni*, Akita *kori*, in a pledge, the debtor delivers a deed of perpetual sale[7] to the creditor, and takes a receipt in exchange. The term varies from 3 to 10 years. The transfer is recorded in the land-register[8] and the name of the owner is changed. If a default occurs, the land is forfeit.

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1. It seems to be a transaction accompanying the abandonment of one's own family name (*nai-tsubure*, private-extinction) and adoption into another family, in order to keep the latter from dying out, as described in the chapter on "Domicile" in Part VII. 2. *Kimoiri*. 3. *Okimoiri*. 4. *Daikwan*. 5. *Gundai*. 6. *Takawake-negai*. For some further notes on mortgage and tenancy in Rikuzen *kuni*, see Appendix. 7. *Yeitai-uri-watashi*. 8. *Goyo* (official)-*cho*.

HOKKAIDO. In Oshima *kuni*, Kumedo *kori*, all mortgages of realty are in the form of hypothec.[1] In most instances the title-deeds are deposited with the creditor, and no instrument is executed.

HOKURIKUDO. In Wakasa *kuni*, Onifu *kori*, the name used is always "pledge," never "hypothec." There are, however, two methods. Where the term is limited, the creditor is never charged with the payment of taxes and sundry charges; but where there is no fixed term, the creditor is so charged.

In Echizen *kuni*, Asuha *kori*, in villages, a pledge is called "original article",[2] and the pledgee pays the taxes[3] and sundry charges.[4] In the hypothec, land is merely subjected to a lien.[5] In towns, in a pledge of realty, the house and adjoining land is all given over to the pledgee, who renders the various services.[6] The deed usually provides that if the house is burnt by calamity of Heaven,[7] the ground alone need be restored. In Tsuruga *kori*, what is called "hypothec" is the creation of a lien[5] on cultivated, forest, or residence land for a limited period; and if a default occurs, the debtor sells the land mortgaged and then pays his debts. A pledge, in the usual sense, is unknown.

In Kaga *kuni*, Ishikawa *kori*, the hypothec[8] of land is forbidden by a law of the fief; so that people usually mortgage by means of a sale with agreement for re-purchase within an agreed period.

In Echu *kuni*, Imizu *kori*, both pledge and hypothec of land are forbidden by a law of the fief. However, a hypothec of buildings is often privately made, the debtor giving the creditor an instrument countersealed by a witness, and keeping possession of the property. The creditor cannot

1. *Teito, kakiire.* 2. *Hon-motsu*,—probably an abbreviation of *hon-motsu kayeshi*, or conditional sale, described in the chapter on "Sales" and substantially a pledge. 3. *Koso.* 4. *Shohi.* 5. *Teito.* 6. *Yaku.* 7. *Ten-sai.* 8. *Kakiire-shichi.*

on default take possession of the property, but has a right to have it sold to pay the debt.

In Echigo *kuni*, Kambara *kori*, in towns, when a hypothec[1] is made, the instrument is countersealed by the debtor's company and transmitted with a petition to the ward-representative.[2] The latter searches the register to see whether a prior mortgage exists, enters in the register of the ward-assembly the debtor's name, the amount borrowed, the term and the interest, certifies by inscription the genuineness of the instrument, and hands it to the elder, who examines, indorses, and seals it. In villages, the borrower and lender consult and agree as to terms, and the former then petitions the headman to permit the contract. If permitted, the debtor executes the instrument and delivers it to the creditor. The term cannot exceed 10 years, and during that time the creditor is entered in the land register as owner. In case of default the land becomes forfeit, and an instrument of forfeiture is delivered to the creditor by the debtor, the former thus obtaining complete and perfect ownership of the land. In Uwonuma *kori*, there are two kinds of pledge, one, a pledge properly so called, lasting usually for 5, 7 or 10 years, and the other in substance a sale. The form of the instrument is in both the same; but in the latter the term is one year only, and if a default occurs, the land is forfeited to the creditor. In Koshi *kori*, a pledge, whether of cultivated land or of residence land, is in form a sale, the instrument being known as a "deed of offering."[3] The buyer gives the seller a document agreeing to return the land at the expiration of an agreed period on payment of the original sum. The only requisite for hypothecs is the attestation of the instrument by the local officials. In Kubiki *kori*, the custom is for the debtor to give the creditor an instrument of sale,[4] and the counter-

1. *Kakiire-shichi.* 2. *Machi-dai.* 3. *Sashiage-shosho.* 4. *Baiken-shosho.*

seals of the company and the headman are wanting, the parties alone sealing the instrument. In Kariha *kori*, a hypothec requires the attestation of the local officials, in villages as well as in towns. There are two methods of pledge; in one, the creditor pays the taxes and services; in the other the debtor. The parties choose the method they prefer; but the former is usually a sale to all intents and purposes.

In Sado *kuni*, Zota *kori*, the borrowing of money by giving security in the shape of a lien[1] is called "pledge," although the transaction is in fact only a hypothec.[2] The taxes during the term may be paid or not by the creditor, according as agreed; but in the former case the transaction is in effect a sale.

SANINDO. In Tango *kuni*, Yosa *kori*, in villages, mortgages of cultivated land are sometimes called pledges, while they are in fact hypothecs, the debtor paying the taxes and sundry charges. But the mortgagee, even when claiming under a properly attested deed, cannot satisfy himself from the estate until it has discharged all arrears of taxes. In hypothecs of town land, a slip[3] is attached to the entry in the house-register, and the details are entered in a separate book called "register of house-pledges."[4] On default, the house is, according to the term of the agreement, either transferred to the creditor or sold.

In Hoki *kuni*, Omi *kori*, the debtor sometimes makes a perpetual sale to the creditor, receiving in exchange a document stipulating to return the land on payment of principal[5] and interest[5] before the expiration of the term. This is the true pledge. Other transactions, though called pledges, are in fact hypothecs.

In Idzumo *kuni*, Shimane *kori*, in towns, no distinction has ever been made in words between "pledge" and "hypothec," the term "pledge" serving for both trans-

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1. *Teito.* 2. *Kakiire.* 3. *Sagefuda.* 4. *Iye-shichi-cho.* 5. *Gwan-ri.*

actions. The debtor delivers to the creditor the instrument, countersealed by a surety and by the company and indorsed by the chief inspector[1] and the ward-elder; the creditor then delivers the money or rice agreed on. No distinction is made between the mortgage of a building and of the ground under or around a building, both being known as "house-and-lot"[2] mortgages. In villages the parties to a hypothec report to the headman,[3] who enters the particulars in the register of pledges,[4] and the instrument, after being countersealed by the headman and elder, is given to the creditor. But the latter does not take possession of the land, and interest is paid in money.

In Iwami *kuni*, Mino *kori*, all pledges are countersealed by the ward or village officers. The creditor takes possession of the land and obtains a profit by cultivating it himself, so that no interest is paid. At the end of the term the debtor may redeem by paying the principal. In hypothecs the ownership remains in the debtor, so that the interest is to be paid in money, and on redemption both principal and interest must be paid.

SANYODO. In Harima *kuni*, Shikito *kori*, the usual term for a pledge is one year, the taxes and sundry charges being paid by the pledgor, and the land being redeemable on payment of principal and interest. But the original instrument retains its validity without renewal [and gives a right of redemption] for 10 years in all, and if default then occurs, the ownership passes to the creditor. In Sayo *kori*, the usual term is 3 years, the pledgor paying taxes and having the privilege of redemption, as above, for 10 years.

In Bizen *kuni*, Mino *kori*, in towns, instruments of mortgage must bear the seal of the headman and also of the house-pledge officials, who are publicly elected, by order of

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1. *O* (official or chief)-*mokudai*. 2. *Iye-yashiki*. 3. *Shoya*. 4. *Shichi-hikaye-cho*.

the magistrate, and transact all business relating to mortgages of real property.

In Aki *kuni*, Numata and Aki *kori*, the usual term for a security,[1] whether in villages or in towns, is 9 months. At the end of that time another 13 months is added. If the debtor is then still in default, and the parties cannot be reconciled, the land must be transferred to the creditor. This is called "register-changing."[2] But it seldom happens, for the local officials are required to bring about a private settlement whenever possible.

In Suwo *kuni*, Yoshihiki *kori*, a hypothec is constituted as follows. The debtor reports to the balk-master[3] (who keeps the land-register and the pledge-register [4]); the latter the name and area of the land and the terms in the pledge-register, and then, with the headman, indorses the instrument. The debtor retains and cultivates the land himself, paying interest in money. The land seldom goes to the creditor by forfeit; for the debtor, if his money fails, sells the land and discharges his debt with the proceeds, the value usually being much in excess of the debt. But if the land will just pay the debt, it is forfeited to the creditor, and the debtor transfers it by a "deed of offering"[5] or "deed of grant."[6] In Kyuka *kori*, a mortgage is usually effected by a deposit with the creditor of the title-deeds,[7] with a so-called "annexed-document."[8] This is called a "deposit-pledge."[9] The instrument is not sealed by the ward or village officers. Sometimes a mortgage is accomplished by the surrender of the old title deeds and the issue of fresh ones indorsed and sealed by the ward or village officers. This is known as an "original pledge;"[10] the process being similar to that used in sales for a term of years.

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1. *Teito.* 2. *Cho-kiri.* See the chapter on "Sales," Yamato *kuni.* 3. *Aze-kashira.* 4. *Shichi-ire hikaye-cho.* 5. *Age-jo.* 6. *Yuzuri-jo.* 7. *Kenjo.* 8. *Soye-shomon.* 9. *Nagekomi* (throw into)-*shichi.* 10. *Hon-shichi.* See note 2, p. 102.

In Nagato *kuni*, Amu *kori*, when buildings only are hypothecated, the instrument does not bear the seal of ward or village officers.

NANKAIDO. In Kii *kuni*, Nakusa and Imibe *kori*, when a security[1] is given, the deed is sealed by the debtor and witnesses and attested by the headman,[2] *kimoiri*,[3] and chief-headman,[4] and the transaction is called "return of original price;"[5] the transaction is in effect a sale. In towns, when a debtor defaults, the ward officers call upon him, and if no result ensues, the town magistrate is informed and the property sold to pay the debt. The surplus, if any, is given to the debtor; if there is none, the creditor suffers so much loss. But sometimes, when the value of the estate is much below the amount of the debt, the land is transferred directly to the creditor, being then called "forfeit-land."

In Awa *kuni*, Miyoshi *kori*, there is a kind of pledge called "sale for full 5 years,"[6] by which the debtor delivers the land to the creditor, who is to pay the taxes, to restore the land at the end of 5 years (but not before) on payment of the debt, and to keep it until paid. An old custom permits redemption at any time within several tens of years. In a hypothec, the debtor, when the contract of loan has been made, signs the instrument, procures its attestation by the village official whose duty it is to examine lands, and delivers it to the creditor, who gives the money in exchange.

In Sanuki *kuni*, Kagawa *kori*, hypothecs are included in the term "pledge." On default, the property is forfeited to the creditor; and if the debtor neither pays nor executes a transfer, an action may be brought. But this

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1. *Teito*. 2. *Shoya*. 3. See Introduction. 4. *O-joya*. 5. *Honsen* (original thing)-*kayeshi* (return). Though *teito* is used, there seems to have been here a transfer of possession. See *infra*, Buzen *kuni*, and in the chapter on sales, Kii *kuni*. See also Echizen *kuni*, *supra*. 6. *Goka-nen-kiri-uri*.

seldom happens, as the headman[1] and elder usually intervene and procure the debtor to pay. In Naka *kori*, in villages, to make a lien upon cultivated land to secure borrowed money, a record[2] is made of the land's production and area, the property being then known as "pledged thing."[3] The usual term is one year, and when this expires, the deed may be renewed. In towns the term is the same, and if interest is regularly paid, the deed is allowed to continue without renewal for an indefinite time. This kind of transaction is properly called "hypothec."[4]

In Iyo *kuni*, Uwa *kori*, in villages, to borrow by creating a lien in cultivated land, the debtor pledges the title-deeds,[5] and the instrument of debt is signed by the company-chief. On default, the property is usually sold. In towns (where the term "pledge" includes hypothecs) the instrument is attested by the ward-officials,[6] and in case of dispute, the latter must fulfill their duty by intervening to settle it. In Onsen *kori*, in villages, the pledge of cultivated land, other than new land,[7] is prohibited. Mortgages violating this rule have force only between the parties themselves, and the officials do not record or enforce them. In towns, where a house or lot is pledged, the ownership is changed in the pledge-register by attaching a pasted slip. On default, the complete ownership is immediately transferred. The hypothec is of the ordinary kind.

SAIKAIDO. In Chikuzen *kuni*, Sawara and Naka *kori*, the ordinary distinction exists, in villages, between pledge and hypothec. In towns the hypothec only is used.

In Chikugo *kuni*, Mii *kori*, the instrument of pledge must be sealed by the debtor and the surety, and countersealed by the inspector[8] and the headman. The creditor cultivates the land, paying taxes and local charges, and

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1. *Shoya*. 2. *Kakiire*. 3. *Shichi-motsu*. 4. *Kakiire-shichi*. 5. *Ko-sayeinda*. See the chapter on "Ownership and Title" (Iyo kuni), in Part V. 6. *Machi-yo-gakari*. 7. *Shinden*. 8. *Metsuke*.

taking the profits in lieu of interest. The term varies, and even in case of default, it is customary to restore the land upon payment at any time within 10 years after the expiration of the term. But this time is by previous agreement sometimes extended to 15 or 20 years. The rules for sealing the instrument of hypothec are similar.

In Buzen *kuni*, Kiku *kori*, a pledge is called "return of the original article,"[1] and is in the form of a sale of the property with agreement to return on payment of the principal. The term may be limited or unlimited. Hypothec is known as "security;"[2] either a deed is given containing a description of the land, or the title-deeds[3] are deposited with the creditor. In Shimoge *kori*, in towns, when a pledgor is in default and the creditor begins an action, a "first closing,"[4] and then if payment is not made, a "second closing,"[4] is ordered by the feudal official, and then the property is transferred. In Usa *kori*, pledges are all made in the form of sales for a term of years.[5] The hypothec[6] is of the ordinary kind.

In Bugo *kuni*, Oita *kori*, pledges are made under the name of "sales for a term of years," the term "pledge" not being used. The hypothec is of the ordinary kind. To prevent double hypothecation an entry is made in the land register.

In Hizen *kuni*, Sonoki *kori*, hypothec is known as "pledge." Pledge is known as "sale for a term of years."

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1. *Honmono-kayeshi.* 2. *Hiki-ate.* 3. *Ko* (old)-*shomon* (deed). 4. *Ge* (lowest)-*bu* (part?); *jō* (highest)-*bu*. The explanation is that the doors of the shops were (probably) in two parts, an upper and a lower, opening and closing independently, and that the *gebu* signifies the preliminary closing of the lower half, the *jobu* the final closing of the shop and cessation of business. The first closing was apparently provisional, and was intended to hasten the debtor's action, and if the money was speedily raised the process would go no further. Compare the chapter on "Bankruptcy," Echigo *kuni*. 5. *Nenki-uri-watashi.* 6. *Kakiire, teito.*

In Saga *kori*, the term is not prolonged unless the consent of the creditor is secured and a new instrument made out.

In Higo *kuni*, Aso *kori*, a pledge is ordinarily for a term of 3 years, the pledgor not being entitled to possession again until the expiration of the term. There is also a "receiving-pledge,"[1] in which no term is fixed, and the debtor may at any time resume possession on payment of the principal. In the so-called "temporary-pledge"[2] (which is really a hypothec), the creditor takes interest on the debt instead of cultivating the land, and the debtor retains possession. Perpetual sales of land to persons outside the seller's village are forbidden; so that in such cases the transaction of pledge is much resorted to for the purpose. In Takuma *kori*, the seal of ward or village officers is not required for an instrument of pledge; but the company of the debtor seal as witnesses. The pledgor and pledgee go to the ward or village office and procure the change of the owner's name in the land-registry. In Akita *kori*, pledges are of two kinds, the names being "term-pledge"[3] and "receiving-pledge."[1] In the former, the term of years is agreed on, the money is advanced, and stipulations are made that the debtor shall not take back the land during the term, nor after its expiration without first discharging the debt, and that the creditor shall at any time after the term restore the land on payment of the debt. Each party executes an instrument and both are counter-sealed by the headman and attested with divided-seal by the chief-headman. This is the proper method; but when the land is of small value, these proceedings are taken only as to the instrument coming from the

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1. *Uke-yosei* (receive into, collect)-*shichi*, *juki-shichi*. The Chinese characters are the same, the former pronunciation being probably the usual one. The idea may be that of collecting or getting back on demand and payment. 2. *Toza-shichi*. 3. *Nenki-shichi*.

debtor. In the "receiving-pledge" the term is not fixed. Debtor and creditor each execute an instrument, the provision being that the land shall be returned on repayment of the debt. In all kinds of pledge, redemption must occur between the 11th and 3d months inclusive.[1] It is a regular stipulation in instruments of hypothec that the debtor shall make no objection if on default at the end of the term the creditor assumes possession of the property. The instrument is sealed by both parties and countersealed by the headman. But in some localities the latter formality is omitted.

In Hyuga *kuni*, Miyazaki and Koyu *kori*, hypothec is the only form of mortgage, pledge being unknown. In Usuki *kori*, in villages, where the pledge is for a term of years (usually 10 years), the pledgee takes possession, pays taxes and charges, and takes the profits by way of interest. Redemption cannot take place till the end of the term. Where the need of money is pressing, the security is usually a hypothec, interest and principal being paid together at the end of the term. In towns, hypothec alone is used.

In Satsuma *kuni*, Kagoshima *kori*, the seal of the village or ward officers is required for a hypothec. In towns this seal is usually placed upon a separate document, in which the debtor's company state that they will make no objection, even if, according to stipulation, the land is delivered to the creditor on default at the end of the term. This document is given to the creditor.

In Iki *kuni*, Ishida *kori*, pledge goes by the name of "sale for a term of years,"[2] the estate being given to the creditor during the term. Hypothec is known as "lien,"[3] the debtor giving the creditor an instrument describing the property.

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1. In order that an unjust advantage might not be reaped from crops planted in spring. 2. *Nengen-uri*. 3. *Teito*.

In Tsushima *kuni*, Shimoagata *kori*, the hypothec is of the ordinary kind. In pledges, the creditor cultivates the land during the term, but the owner pays the taxes and sundry charges.

2.—PERSONAL PROPERTY.

In Settsu *kuni*, Nishinari *kori*, in order to make a valid lien,[1] the article must be delivered to the creditor. But fixtures[2] (such as ovens, ceilings,[3] supports[4] for sliding-doors, and other detachable articles) may be hypothecated by record.

In Yamato *kuni*, Soyegami *kori*, pawnbrokers[5] nowadays often accept certain articles as security by a transaction similar to hypothec, in which interest[6] is paid.

In Kai *kuni*, Yatsushiro *kori*, no report to the headman is made in case of a pledge of rice, clothes, or the like. But the money-lender notes the details in a book and gives the pledgor a certificate attesting the right to redeem on payment. If a default occurs, the article is forfeit.

In Shinano *kuni*, Takai *kori*, the usual term is 8 months or a year. If the article is lost or destroyed while in the custody of the pledgee, he is bound to make compensation; and this is measured, in case of loss, by twice the amount of the sum lent, and in case of destruction, by the market price of the article. But if the destruction is by fire or the loss by theft, the pledgee is not responsible.

In Rikuzen *kuni*, Miyagi *kori*, rice, utensils, clothes, and other pledged articles are deposited with the pawnbroker, who gives the debtor a certificate containing a description of the articles and the amount of the debt. The term is usually 8 months. A pledge of the person to the

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1. *Teito*. 2. *Kugi* (nail)-*tsuke* (affix)-*mono* (thing). 3. These are often made of boards laid without nails upon rafters. 4. *Shikii*, *kamoi* (wooden beams). 5. *Shichiya*. 6. *Nichi-bu*.

service of another[1] was also known in former times. The parents of the child reported to the headman, executed an instrument of debt, received the loan and delivered the child to the lender for a term of 5 or 10 years, the child being registered in the family of the creditor. This transaction was the only exception to the rule forbidding removal from a village to a town. But the custom has gradually disappeared since the period Kwansei (1789–1801).

In Echū *kuni*, Imizu *kori*, if a default occurs, the article is forfeit and the pledgee may sell it or keep it as his own. In Nei *kori*, none but pawnbrokers may lend money on security. If the article pledged is lost or destroyed by flood, fire, theft or other unforeseen event, the pledgee is not liable to make compensation, nor the debtor to pay the debt.

In Echigo *kuni*, Kubiki *kori*, no instrument is required for the validity of a pledge, If the pledge was effected by the agency of another, he is regarded as a witness. In the town of Niigata any one may lend on pledge. The regular term is 3 years; but practically redemption may be made at any time by paying principal and interest.

In Idzumo *kuni*, Nogi *kori*, the term is usually 6 months. On its expiration the creditor notifies the debtor to redeem; if he fails to redeem, the creditor may dispose of it as he thinks best.

In Suwo *kuni*, Yoshihiki *kori*, a pledge of rice may be made by delivering the rice to the lender and receiving the loan and a written receipt, or by depositing it in the public storehouse and giving the creditor an instrument of debt endorsed by the headman in charge of the storehouse. A term must always be fixed beforehand. For articles other than rice the creditor merely gives the debtor a certificate, in which it is stated that the pledgee undertakes no responsibility for damage by fire or by rats. The

1. *Shichi-mono-hōkō.*

ordinary term is 6 months. In Kyuka *kori*, the lending of money on pledge of rice or other articles is known as "raising ready money."[1] Where the article is one having a market price and the latter falls below the value named in the agreement, the borrower must make a part payment [or the article will be sold forthwith]. Interest on metal articles is usually 2 per cent, on others 1½ per cent per month. The same form of instrument is used in all cases. If principal and interest be not paid at the end of the term, the thing pledged becomes the property of the creditor.

In Chikugo *kuni*, Ikuba *kori*, the term varies from 6 to 12 months; but practically the debtor can redeem as long as the article is in the creditor's possession.

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1. *Gen*-(present)-*kin* (money)-*ire* (put in). The idea seems to be that of putting the articles in pledge, and getting money in exchange. Perhaps the *shichi* of *shichi-ire* originally belonged in the phrase.

CHAPTER VII.

PRESCRIPTION.[1]

Usually, when a civil action arises in any province, some popular headman and elder in the district are chosen as go-betweens, to talk over the parties to an amicable understanding, and thus no judgment comes to pass as to the right or wrong of the matter. The result is that the question of prescription rarely arises, even in case of unsecured loans. But there are some special customs to be noted.

KINAI. In Settsu *kuni*, Yabe *kori*, when a dispute arises as to a contract of loan or of deposit and an action is brought, the feudal officials do not take cognizance[2] of it if 10 years have elapsed since the execution of the instrument sued on.

TOKAIDO. In Iga *kuni*, Abe *kori*, it is the general custom, when a money loan[3] is in arrear for more than 20 years, that the instrument is destroyed and the account struck out of the books.

In Suruga *kuni*, Shida and Mashizu *kori*, in the case of a commercial house, when a money loan[4] or a credit[5] has been in arrear for more than 20 years, or on account of the death or absconding of the debtor cannot be collected, it often

1. *Kiman* (end of term) *tokumen* (acquire-freedom). 2. *Tori-ageru*. 3. *Kashi-kin*. 4. *Kashi* (lend)-*dashi* (put out)-*kin*. 5. *Uri* (sell)-*kake* (credit)-*kin*.

happens that the facts are entered in the so-called "eternity-book,"[1] and the claim struck out of the principal book.[2]

In Sagami *kuni*, Ashigara *kori*, there is no prescription of money-loans.[3] There is a sort of prescription in case of instruments providing for the redemption of mortgaged land; for even though there is an express stipulation for an unlimited term, the feudal official does not take cognizance after the lapse of 20 years.

In Kadzusa *kuni*, Moda *kori*, prescription usually occurs if a sum loaned or received on deposit is in arrear for more than 10 years.

HOKURIKUDO. In Wakasa *kuni*, Onifu *kori*, it is the general custom, when a sum loaned or given on deposit has been in arrear for 10 years or so, that the creditor abandons his claim.

In Echizen *kuni*, Asuha *kori*, the feudal official takes cognizance only of pledges or hypothecs of realty evidenced by official attestation, and not of ordinary private loans; so that prescription is not known, [since the former are perpetually enforceable and the latter not at all].

SANINDO. In Harima *kuni*, Shikito *kori*, the law is that when an action is brought for a loan, for money given on deposit, or the like, and 120 months have passed since the time for payment named in the instrument, the feudal official does not take cognizance of it.

In Bigo *kuni*, Mitsuki *kori*, there is an old law that, when an action is brought on a loan which has been overdue for 10 years, the feudal official shall not take cognizance.

NANKAIDO. In Sanuki *kuni*, Naka *kori*, the feudal official does not take cognizance of actions on contracts, such as loans, money received on deposit, and the like, after 10 years from the time fixed for payment in the instrument.

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1. *Man* (ten thousand)-*nen* (years)-*cho*. But there is a heavy paper known as "*mannen-gami*," and the name probably arises merely from the use of this paper as the material for the book.
2. *Hoki-cho*. 3. *Kinsen taishaku*.

SAIKAIDO. In Buzen *kuni*, Shimoge *kori*, notwithstanding demands for payment that may have been made by the creditor, the feudal official does not take cognizance of any action brought after 10 years from the time of payment named in the instrument.

In Bugo *kuni*, Hayami *kori*, the feudal official does not take cognizance of an action brought to recover a loan or money received on deposit after 20 years from the time of payment named in the instrument.

In Hizen *kuni*, Takaku *kori*, it is an old law that the feudal official shall not take cognizance of an action upon a contract brought more than 10 years after the time of payment fixed in the instrument.

CHAPTER VIII.

BANKRUPTCY.[1]

As a rule, when a person's debts[2] accumulate,[3] and his property does not suffice to pay, his relations and company act for him,[4] and after coming to agreement[5] with all his creditors,[6] fulfill his obligations by distributing among them the money [resulting from a sale of his effects]. If any one of the creditors is dissatisfied and declines to accept the dividend,[7] the local authorities[8] take the sum in trust. This mode of bankruptcy is called "bankruptcy by composition."[9] When the act of insolvency consists in the non-payment of taxes, the local authorities supervise[10] the matter and take out first the amount of taxes due. This is called "bankruptcy affecting the feudal office."[11] Most bankrupts remove to another region to obtain employment; and even where they remain at the place of their bankruptcy, they have lost their property and therefore cannot continue on an equal footing in social intercourse. Such is a general outline of the customs. Special variations are as follows.

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1. *Hōki* (abandonment). More common terms are *shindai-kagiri* (property-all), *hasan* (break, destroy-property) *bunsan* (disperse-property). In *shindai-kagiri* the idea is that the debtor gives up to his creditors "all his property." The term "insolvent" is here used to signify the state of being unable to pay; "bankrupt," to mean one who has been adjudged insolvent. 2. *Fusai.* 3. *Kasami.* 4. *Shūsen.* 5. *Kyogi.* 6. *Saishu.* 7. *Haito-in.* 8. *Yakuba.* 9. *Kiogi-jo no bunsan.* 10. *Tachiai.* 11. *Kwan ni taisuru bunsan.*

KINAI. In Yamashiro *kuni*, Otagi and Kazuno *kori*, the local authorities, when a man becomes insolvent, make an inventory of his property, appoint a commissioner [1] from among his relatives, call the creditors together, cause the property to be sold, distribute the proceeds, and thus discharge the obligations of the insolvent. In rural districts bankruptcy proceedings take place only in case of non-payment of taxes, not in case of non-payment of ordinary debts.[2]

In Settsu *kuni*, Yatsushiro *kori*, in the case of forced bankruptcy,[3] the local authorities supervise the proceedings, selling the property and distributing the proceeds among the creditors. Custom requires that those who have been subjected to this procedure shall cease to wear the outer coat [4] and to use their hereditary family names,[5] and their rights as members of the village are greatly curtailed. In the case of bankruptcy by amicable private composition,[6] the creditors give their sanction, and there is therefore no special curtailment of rights. In either case there is no further call [7] upon the debtor by his creditors for payment, even if he succeeds in gathering property again.

TOKAIDO. In Iga *kuni*, Abe *kori*, when the act of insolvency consists in the non-payment of a claim of the feudal office, and the proceeds of the sale of his property are insufficient, his relatives, his company, and the people of the village, are liable for the deficit, in the order named. By old custom a bankrupt is forbidden to use a rain-hat or clogs even in rainy weather.

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1. *Sewa-nin* (a general word for manager, committee-man, or commissioner). 2. *Sotai-taishaku* (debts contracted face to face, i. e. without official attestation). But here the term seems to cover all ordinary claims in favor of private parties. 3. *Kosai* (judicial decision) *bunsan* (i. e. involuntary bankruptcy, resulting from an appeal to the authorities by the creditors). 4. *Haori*. 5. *Ruidai no kamei*. 6. *Sotai* (face to face) *jukudan* (amicable agreement). 7. *Saisoku*.

In Ise *kuni*, Ano *kori*, where the act of insolvency consists in the non-payment of a claim of the feudal office,[1] the village authorities supervise the proceedings, have the property sold, take out the amount of the lord's claim, and distribute the surplus, if any, to the other creditors. In case of an ordinary debt,[2] the relatives and the company of the debtor take entire charge of the proceedings and the village authorities do not interfere at all. Generally, the creditors who receive a dividend[3] are deemed to have relinquished their rights and do not make any subsequent demand upon the debtor for any unpaid portion of their debts. When a man owes so much to the feudal office that he is not able to pay it all, and in consequence his fellow-villagers are obliged to fulfill[4] his obligation, he is called a "sold-out man,"[5] and the villagers, first reporting the matter to the authorities, build him a separate cottage, without any floor, in a corner of the village, and make him do laboring services for the village, not allowing him to cultivate [land for his own benefit]. In his temple-register[6] also he is termed "sold-out," and he is not accorded the ordinary treatment of a farmer. But if he afterwards acquires means again and pays his debts in full, or if they are paid by his children or other descendants, then the term "sold-out" is erased, and he resumes his rights and his position among his fellow villagers. In a town, the relatives of a bankrupt of this sort take charge of him, and he loses his independent domicile.[7] They provide a suitable livelihood for him, and no special curtailment of his rights takes place.

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1. *Ko-shaku*. 2. *Shishaku* (private debt). 3. *Bumpai-kin* 4. *Benshō*. 5. *Ko-kyaku-nin* (*ko-kyaku*,—probably, proceeds of a public sale, hence one who has been sold out). 6. *Shumon-cho*. See Simmons' "Notes on Land Tenure" for the status of a farmer. 7. *Fu* (appendant)-*seki* (domicile), i. e. his domicile is considered as merged in or attached to that of his relatives; his independence s lost.

In Owari *kuni*, Aichi *kori*, when a person becomes insolvent, his relatives and company take charge of the matter, ascertain his property, procure the assent under seal of all his creditors, sell all his property, except that covered by mortgages[1] evidenced by an officially sealed instrument, and distribute the proceeds. Those who receive a dividend[2] relinquish all right to the unpaid claims and do not again call upon the debtor for payment. In villages, the bankrupt's relatives and company enable him to earn a livelihood as a farmer, by giving him a mattock and a poor cottage scarcely sufficient to protect him from rain. If he has no relatives, the villagers give him these, and also lend[3] him a piece of cultivable land. In towns, there are usually some creditors who do not accept the dividend but wait until the debtor again acquires means to pay, but in villages all creditors are obliged, by custom, to accept the dividend offered. The bankrupt himself and his descendants for three generations cannot be elected to any village office whose holder is regarded as having authority over other persons.[4]

In Mikawa *kuni*, Atsumi *kori*, when a person becomes insolvent, his company report it to the local authorities. These supervise the proceedings, seal[5] all the debtor's property, sell it by ordinary auction[6] or by secret-ticket auction,[7] and distribute the proceeds among the creditors. In the case of mortgaged[8] property, if the mortgage is evidenced by the seal[9] of the headman,[10] the secured creditor of course has a right of preference[11] in the distribution of the proceeds. If a creditor agrees to accept the dividend, he takes the money and surrenders his instrument, relin-

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1. *Teito.* See the Chapter on "Hypothec and Pledge." 2. *Bumpai-kin.* 3. *Adzukeru.* 4. *Hito no cho* (head of men). 5. *Fū-in.* 6. *Seri-uri.* 7. *Nyu-satsu* or *irefuda.* See the Chapter on "Sales." 8. *Teito.* 9. *Oku-in.* 10. *Shoya.* 11. *Saki* (first)-*dori* (take) *ken* (right).

quishing all further rights. Sometimes a creditor declines the dividend and decides to wait until the debtor again acquires means, and his claim remains outstanding until that time. Subsequent payment by the debtor under these circumstances is called "prosperity-payment."[1] When a bankrupt has surrendered[2] his home[3] to his creditors, his friends (most frequently his relatives), out of pity for his misfortunes, in many cases provide for his support. Thus it appears that a bankrupt does not incur any special disgrace, and he may even be chosen as one of the town officers. Where a debtor defrauds his creditors by concealing[4] his property, the company is regarded as responsible; so that it is always obliged to investigate and to prevent this. Where insolvency occurs and taxes are in arrear, it is the custom to pay them from the proceeds[5] of the sale before any other claims are paid. In Nukata *kori*, when a person becomes insolvent, and wishes to surrender[6] his property, he reports the fact to the local authorities. Then the headman, and the debtor's company supervise the proceedings, ascertain the amount of his property, and sell it. They first take out of the proceeds the amount of ward-money or village-money.[7] This signifies a sum of money lent upon interest to the headman of a town or village by the lord of the fief. It was called "official loan,"[8] and was applied, in a town, to the expenses of public post-horses,[9] and, in a village, to the expenses incurred by the village in paying[10] the taxes, etc, of a defaulting villager. In more recent times the same phrase *machi-kin* or *mura-kin* has been applied to money received in charge[11] by one village or town from

1. *Shussei-benkin* (rising-in-the-world repayment). 2. *Sashi-dasu*. 3. *Iye yashiki*. 4. *Intoku*. 5. *Bai-kyaku-kin*. 6. *Hōki*. 7. *Machi-kin, mura-kin*. 8. *Go-haishaku-kin*. 9. *Ten-ma*. Messengers of the feudal lord were entitled to demand fresh horses from each *shuku* or post town. 10. *Tatekaye* (paying on behalf of another). 11. *Azukaru*.

another and circulated in loans. The amounts due on secured claims[1] evidenced by the seal of the headman are next taken out, and the surplus is paid to the remaining creditors. Those who accept dividends are regarded as having abandoned all further claims, and do not call upon the debtor for the unpaid balance even if he again acquires property, for the bankrupt is regarded as having "washed" his estate and thus extinguished his obligations. In a village, bankrupts are despised and are not allowed to sit even on the porch[2] in the assembly of the villagers.

In Totomi *kuni*, Sano *kori*, a bankrupt person goes into retirement and places his family in charge[3] of his relatives. When the company report the bankruptcy to the local officials, and arrears of taxes are due, the latter seal up the property, and, after selling it by secret-ticket auction, distribute the proceeds among the creditors. Priority is given to all holding secured claims by way of hypothecation or of pledge.[4] But the homestead is left untouched, so that the family name may not be cut off. Bankrupts may live in their former home, but they go out only by night or in disguise;[5] and so when such bankruptcy is impending in a family of ancient lineage,[6] it has long been the custom for the feudal lord to come to its assistance. In Fuchi *kori*, a bankrupt goes into retirement, and his company proceed on his behalf to the creditors, offer to surrender his property, and request a release.[7] The creditors then supervise the sale of the property, and distribute the proceeds. After this the bankrupt is subject to no further demands.[8] But if it appears that the insolvent, some days before going into bank-

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1. *Teito.* 2. *Engawa.* 3. *Azukeru.* 4. *Teito no shichi-ire kaki-ire.* 5. The same idea underlies also the form of punishment known as *hissoku* or *oshikome.* This was generally reserved for *samurai*, and consisted in an imprisonment in one's own house; but the prisoner might go out and about during the night hours, using as much privacy as possible. 6. *Kyuka.* 7. *Kamben.* 8. *Saisoku.*

ruptcy,[1] has lent money or sold realty, the creditors do not release their claims. Though all his property is subject to sale, his company relatives often manage[2] to buy it in for him and allow him to live in it; the bankrupt, however, lives in disgrace, with closed doors, and goes out only by night. His family is given in charge of his relatives. Even if a turn of fortune comes, he is never allowed to fill any office involving authority over others.

In Suruga *kuni*, Abe and Udo *kori*, in towns, the insolvent reports to the ward-chief, and the latter, after an investigation and a consultation with the creditors, auctions the property, and distributes the proceeds. If any creditor refuses to receive his dividend, the ward-chief takes it in charge[3] and after a few years delivers it to the debtor,[4] [if still unclaimed]. In the distribution, priority is given to claims secured by hypothecation in writing sealed by the ward-chief. In a village, the insolvent goes into retirement, and the headman, when the relatives report to him, immediately makes an investigation, and, acting for the debtor, sells the property and distributes the proceeds, paying first any arrears of taxes. But the farming and cooking implements are not sold, and the bankrupt is permitted to live in an outhouse[5] away from his own home, and the homestead is pledged for 10 years. He is usually not permitted to return to his home, and if perchance he does, he ranks below the *yeta* and *hinin*.[6] Thus the disgrace of bankruptcy is so great that every effort is made to avoid it. In Shita and Mashizu *kori*, the whole village is liable for any arrears of taxes due from a bankrupt. Even if the bankrupt acquires means again and returns to his village, he is called "repayment-man,"[7] and until he repays this amount to the village, he cannot take part in any election of

1. Lit., shutting up shop (*heiten*). 2. Lit., exhaust their strength. 3. *Azukaru*. 4. *Honnin*. 5. Lit., in a *haigoya* (ash-shed) or *kigoya* (wood-shed). 6. For some account of these outcast classes, see Simmons, "Notes, etc." 7. *Benno-nin*.

officers and is regarded as having inferior rights. So that bankrupts often build huts on waste land and become day-laborers.

In Idzu *kuni*, Takata *kori*, the bankrupt does not relinquish[1] his homestead; even though he may offer to do so, his relatives and company do not consent.

In Sagami *kuni*, Kamakura *kori*, the bankrupt's relations and company, acting on his behalf, consult with the creditor, pledge or sell the property, and distribute the proceeds among the creditors. But the homestead they always preserve and give him the use of it to assist him in acquiring means again. In a village all the different families are friendly to each other, having many old ties of relationship, and thus, since in the course of time some may become poor and others rich, mutual forbearance is practised, and it never happens that a creditor refuses to assent to the dividend offered. Often, too, the debtor's company and relatives manage to prevent any loss to the creditors by means of a subscription[2] called "succession-club."[3] In Ashigara *kori*, the homestead is reserved for the debtor. The object of this is to preserve undiminished the number of houses in the village. As the debtor's company and relatives always consult with the creditors on his behalf and bring about a settlement, there has been no litigation over such matters, since time immemorial.

In Musashi *kuni*, Toyoshima *kori*, when a man is in arrears[4] with his debts, and the creditor brings an action[5] in the office of the town magistrate, and on account of the debtor's flight or hopeless insolvency no means of payment appear, one of his relatives is advised to come to his assistance and pay.[6] The ward officer then procures the

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1. *Te*-(hand) *banasu*-(separate). 2. *Kyo-kin*. 3. *Sozoku* (succession to property)-*ko* (lottery club). 4. *Todokoru*. 5. *Shusso*. 6. Lit., give assistance-money (*jo-kin*).

dismissal of the action. This is what occurs in most cases; but if no assistance is given, the creditors either consent to the bankruptcy and accept the dividend, or wait and proceed against the debtor when he acquires property again. The preceding statements apply to the common people. But where judgment is given against one of the gentry,[1] the case is often transferred to the Chamber of Decisions,[2] and an order is made for the payment of the claims in yearly instalments;[3] this is called "payment by instalments."[4] Sometimes the town magistrate, keeping the matter in his own hands, detains the debtor until an investigation of his means can be made.

In Hitachi *kuni*, Niibari *kori*, after the permission of the headman is obtained, the debtor's company consult with the creditors, sell the property, and distribute the proceeds. The homestead is not included in the sale, and is given to the debtor.

TOSANDO. In Omi *kuni*, Shiga *kori*, the village officials take charge, in case of insolvency, auction the property, and distribute the proceeds among the creditors, reserving homestead property to the extent of 10 *tsubo*. There is a place called "distress-district,"[5] where huts are built for bankrupts, and they live there, entering the village only occasionally until they acquire means again. A man suffers a loss of rights when he becomes bankrupt. In Inugami *kori*, in old times, bankrupts were not permitted to use the outer coat or the rain-hat.

In Mino *kuni*, Atsumi, Kagami, and Katagata *kori*, the insolvent employs an agent,[6] and after consulting with his creditors, sells his property and distributes the proceeds. In the lonely villages among the mountains, the bankrupt retires to a hut outside the village. Even this hut may not be built in the usual style; there must be no foundation

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1. *Buke*. 2. *Hyojosho*. 3. *Nennen wari-watashi*. 4. *Kiri-kin*. See Part III. 5. *Nanju-cho*. 6. *Sewa-nin*.

stones, and the thatch-material must be reeds[1] placed in the opposite direction to the usual one. This style is called "hole-foundations and cross-thatch."[2]

In Kotsuke *kuni*, Owaraki *kori*, the insolvent delivers his property to his company, who consult on his behalf with the creditors, obtain their sealed consent, sell the property, distribute the proceeds, and thus fulfill his obligations. In villages a bankrupt's rights suffer more or less diminution, and he is not permitted to wear a rain-hat.

In Iwashiro *kuni*, Shinobu *kori*, the creditors meet, and the headman, taking charge, sells the bankrupt's property and distributes the proceeds. The creditors generally consent that his homestead shall be retained. Few bankruptcies occur. In Aidzu *kori*, it is the custom, in the case of ordinary indebtedness, for the parties concerned, at the instance of the feudal officials, to make an amicable settlement, so that there is practically no such thing as bankruptcy. Where a person is unable to pay his taxes, all his property is taken by the officials in payment. This is called "residue-sale."[3]

In Rikuchū *kuni*, Isawa *kori*, it is a popular maxim that "a family must not be rooted out," and so when a man finds himself insolvent, his friends as a rule manage the matter on his behalf, pay his debts, and relieve him from the necessity of removing to another district or of living in disgrace among his neighbors.

In Mutsu *kuni*, Tsugaru *kori*, the insolvent, when there is no longer any hope of paying his creditors, calls a meeting,[4] and surrenders all his property[5] for distribution among the creditors. Yet the latter often contrive instead to find some livelihood for the debtor and allow him to repay them when he has obtained the means; so that the number of bankrupts is small.

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1. *Kaya*. 2. *Hori* (hole)-*tate* (build)-*hashira* (post), *saka* (contrary)-*buki* (thatch). 3. *Seki-barai*. 4. *Shu-kwai*. 5. *Shindai-kagiri*.

In Oshima *kuni*, Kamedo *kori*, there is a meeting of the creditors and a consultation,[1] and usually they find some means of restoring his fortunes; so that there are few bankrupts here.

HOKUROKUDO. In Wakasa *kuni*, Onifu *kori*, the number of bankrupts is extremely small. In a ward of 4,000 houses or more, there is about one bankrupt in 10 years; in villages there are none to be found. When a man becomes insolvent, his relations consult with the creditors on his behalf, effect a reform, and enable him to preserve his estate.

In Echizen *kuni*, Asuha *kori*, his relations and company consult the creditors on his behalf, sell all his property, and extinguish his obligations by distributing the proceeds. The real property is put in mortgage,[2] by a document officially attested, and if the proceeds of this are not enough to pay principal and interest, the members of the insolvent's block[3] are obliged to make up the deficit. The rights of a bankrupt suffer more or less diminution; for example, he is not allowed a seat in the ward or village assembly. But such consequences are in no way due to action on the part of the local officials. In Tsuruga *kori*, the debtor's effects are sold by secret-ticket auction, and the proceeds used to extinguish[4] his obligations. In the case of those creditors who possess an instrument of debt known as "good fortune document,"[5] payment in full may afterwards be required when the debtor obtains the means. Other creditors have no further claim after bankruptcy. It is common for the bankrupt to remove to some other district; but if he remains, his rights suffer considerable diminution, and he does not maintain social intercourse with his townsmen.

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1. *Jūku-dan.* 2. *Teito.* 3. *Chonai.* 4. *Manukaru.* 5. *Shiawase-shomon*, i.e. a document agreeing to pay in full whenever the debtor has the good fortune to obtain the means.

In Echū *kuni*, Shimizu *kori*, when proceedings are taken for money due[1] and a distribution[2] takes place of the proceeds of a sale[3] of the debtor's property, it is the custom to take out taxes first, and to distribute the remainder proportionately to the amount of the claims, the amount lacking being handed over by the debtor when his condition[4] improves.

In Echigo *kuni*, Kariha *kori*, it is the custom for the debtor's company, in settling his affairs, to recognize three classes of claims; first, taxes in arrear,[5] second, loans of money,[6] and third, purchase-money unpaid.[7] One who finds himself insolvent stops business, shuts down the door,[8] and hangs a screen in front, and his relations and company settle his affairs in the usual way. The officials do not concern themselves, except to secure the payment of tax-arrears. The bankrupt suffers no considerable diminution of rights.

In Sado *kuni*, Sawata *kori*, the insolvent's relatives and company settle his affairs as usual, and with the proceeds of the sale of his property extinguish[9] his obligations. The officials do not concern themselves, and invariably leave such matters to mutual arrangement of the parties. The rights of a bankrupt are somewhat diminished. But frequently he crosses to the Hokkaido Island, and after he has acquired means again, returns to his domicile.[10] This is called "working at Matsumaye."[11]

SANINDO. In Tango *kuni*, Kasa *kori*, a bankrupt is called, in the villages, "broken-defaulter."[12] He is not

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1. *Tedokori-kin soshō*. 2. *Haitō*. 3. *Uri-barai*. 4. *Mimoto*. 5. *Nengu mishin*. 6. *Shaku-kin*. 7. *Kai-gakari*. 8. *Bu* (戸). The outer doors of a shop often pull down, in part or entirely, from above. Compare with this passage the chapter on "Hypothec and Pledge." Buzen *kuni*, Shimoge *kori*. The character for *bu* is the same in both passages; its meaning is uncertain. [illegible] 10. *Ki* (return)-*seki* (domicile). 11. Matsumaye is a [illegible] do, in old times the largest town in that reg[illegible] (broken, smashed)-*mishin* (non-paying, defaulting).

permitted to wear his outer coat at the village assembly. In towns, the insolvent's relations and company almost always come to his relief, and settlement by way of dividend [1] seldom occurs. In Yosa *kori*, the insolvent's relatives do not concern themselves, and his company settle his affairs in the usual way; the property by custom being auctioned in some much-frequented street. In some cases dissatisfied creditors keep their instruments of debt and await the time when the debtor acquires means again. The business of the bankrupt is taken up by his relatives. His rights suffer no considerable diminution, though he must take a humble position and stand below others.

In Tajima *kuni*, Idzushi *kori*, the insolvent auctions his property, and extinguishes his obligations by paying a dividend to his creditors. In some cases a creditor exchanges his old instrument for a new one, and awaits a future time for payment. In villages they do not allow the bankrupt to wear the outer-coat for the rest of his life. Before the period Tempō (1830-1844) the bankrupt was not allowed to bind up his hair with the queue-string.

SANYŌDŌ. In Harima *kuni*, Shikito *kori*, one who has been publicly adjudged [2] bankrupt delivers up his seal to the officials, who strike his name from the land-register. This is called "losing the name." [3] The bankrupt acquires the domicile [4] of his relatives, but may regain his own domicile [5] after 10 years, or sooner if before that time he acquires means and pays his obligations in full. The officials have no concern with the settling of an insolvent's affairs.

In Bigo *kuni*, Fukatsu *kori*, when a man becomes bankrupt through non-payment of taxes, the village pays the taxes on his behalf, and the bankrupt becomes a "water-drinker," [6] and is not allowed an equal seat [7] in the village

1. *Bumpai-kin.* 2. *Kōsai.* 3. *Bō-mei.* 4. *Ten-seki.* 5. *Fuku-seki.* 6. *Mizu-nomi;* that is, he is so poor that he lives on little more than water. See Simmons, "Notes on Land Tenure," pp. 84, 170. 7. *Dō-seki.*

assembly. In towns, a bankrupt is called "rule,"[1] and no special degradation occurs. In Mitsuki *kori*, when bankruptcy occurs through default in taxes, the officials sell not only the cultivated land but also the residence land of the debtor to make good the arrears. A hut is built for him, on the common-land[2] of the village, barely sufficient to protect him against rain and dew. He is called "gone-up farmer,"[3] and, even if he acquires means once more, is not again known simply as a "farmer." In the case of bankruptcy resulting from ordinary debts, the debtor usually removes to another province and the officials do not concern themselves.

NANKAIDO. In Kii *kuni*, Nakusa and Abe *kori*, an insolvency is usually settled by mutual arrangement with the creditors. But if such a settlement cannot be thus arranged, the creditors petition the officials, and the latter cause the debtor's property to be sold and distributed. Bankruptcy proceedings in villages on account of taxes in arrear are rare, because the relatives and the villagers join in settling the deficiency.

In Sanuki *kuni*, Kagawa *kori*, when a money-lender to the Shogunate,[4] or the descendant of such a person, becomes insolvent, the Government takes charge of the matter; otherwise it is left to private arrangement. The acceptance of a dividend works a complete discharge. A bankrupt becomes degraded and does not hold social intercourse with his townspeople. In Naka *kori*, bankruptcies seldom occur, as the debtor's relatives and company relieve his necessities. But when all means of assistance are exhausted, his property is sold, the proceeds are distributed, and the creditors cancel

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1. *Shiho*, "rule," "method." The connection is obscure. 2. *Kyo-yu-chi* (lit., together-possessing-land). 3. *Agari-byakusho*,—probably because the common was usually on a hill-side. 4. *Kyuhan* (a term for the Shogunate Government) *yōtatsu* (undertaker of a business). The latter word was a euphemism, in this case, to avoid putting the relation on a purely money basis.

the entry of debt. A bankrupt's rights are considerably diminished, and he cannot ever after be chosen to any office of authority over others.

In Iyo *kuni*, Uwa and Onsen *kori*, when a bankruptcy occurs through non-payment of taxes, the debtor delivers up[1] his property to the control of the village.[2] By means of this possession (called "management")[3] of his cultivated land, the village makes good[4] the arrears of taxes. In a town, the creditors assemble,[5] and extinguish his obligations by a distribution of the property; the officials do not concern themselves with the matter. It is an old rule that in all cases of ordinary contracts, where a dispute arises, the feudal office does not entertain any action; so that these matters are always settled by mutual consultation.[6]

SAIKAIDO. In Buzen *kuni*, Kiku *kori*, it happens, in eight or nine cases out of ten, that the insolvent's relatives and company relieve his necessities, and by means of a lottery[7] enable him to continue in business. When this is not done, a settlement is made in the ordinary way, and even his house[8] is sold. No further demand[9] is made upon him, even if he subsequently acquires means. The rights of the bankrupt are considerably diminished, and he cannot express his opinion at any general meeting,[10] nor marry in any family of the village or ward; and it may even happen that a contract for marriage[11] is broken off. In Shimoge *kori*, the debtor summons his creditors, sells his property, and distributes the proceeds, and the creditors destroy[12] their instruments of debt. Sometimes the creditors prefer to wait till he acquires means again. In villages, the arrears of taxes are first taken out. In a village, the bankrupt is driven out of it; in a town, he is forbidden to live on a main street.[13]

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1. *Sashidasu.* 2. *Isson* (the village as a whole). 3. *Shihai.* 4. *Daishō.* 5. *Yoriai.* 6. *Kyō-gi.* 7. *Tanomoshi-ko.* 8. *Ka-oku.* 9. *Semeru.* 10. *Ichidō shukwai.* 11. *Engumi.* 12. *Hogo ni suru* (lit. make into waste paper). 13. *Omote-cho*, in distinction to *ura-dona* or back street.

In Hizen *kuni*, Takaku *kori*, a settlement of the ordinary kind is made; it is called "dispersing the property."[1] There are persons there who have been twice or thrice bankrupt; yet there is no special diminution in their rights.

In Iki *kuni*, Ishida *kori*, the relations and neighbors of insolvents frequently come to their assistance and by means of lotteries[2] enable them to continue their business. In case of bankruptcy, the creditors do not subsequently demand the balance of their claims, even though the debtor again acquires means.

In Tsushima Island, Shimoagata *kori*, there is a saying that "bankrupts may not drink the water of the castle-town," and the bankrupt retires to some lonely village and makes a livelihood there; but he is not specially looked down upon by the villagers.

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1. *Bunsan.* 2. *Mujin-ko.*

APPENDIX.

I.

CUSTOMS RELATING TO TENANCY IN RIKUZEN PROVINCE.[1]

Sanden is rice-land which has become vacant through either the death, the removal or the flight of the cultivator. Such land was scattered here and there throughout the province; hence the name *san* (scattered)-*den* (lowland).[2] *Sanden* was of various sorts, *hommyo* (original name)-*sanden*, *nensu* (sum of years)-*sanden*, *sanden-maye*, *sanden-nami* (row, line), and others. *Hommyo-sanden* is that which has been put in charge of some one who cultivates it and pays taxes as in the case of other lands.[3] *Nensu-sanden* is the same, except that in this case there is a limited term, while in the former the term is indefinite and thus in effect perpetual. *Sanden-maye* is land assessed so high that no one can be found to take the place of the former occupant;

1. These Notes are taken from a "History of Taxation in Sendai Fief" (Sendai fief is equivalent to Rikuzen province), 5 volumes, compiled from local records some 10 years ago by order of the Sendai Prefectural Assembly. It is now extremely rare, and was lent to me for translation by Mr. Matsuzaki Kuranosuke, Lecturer on Taxation at the Imperial University. Since that time his copy also has unfortunately been lost. 2. But this account does not quite tally with the statements on p. 62, *supra*. 3. Because the land was treated as if it was still that of the original owner.

in such a case the feudal official orders the village to bid for it, and the person bidding the highest tax obtains it.[1] This is also known as *sanden-tatezuke*. *Sanden-nami* is a plot cultivated by all the village in common or by an agent for the village. Every plot of *sanden*, when its term of lease expired [and until it was re-let], was cultivated as a *sanden-nami*. In the 3d year of Temmei (1783) a severe famine prevailed, and many farmers deserted their homes, the land becoming *sanden*. The same thing happened during Tempo (1830-1844); and the number of *sanden* plots increased until there were some to be found in every village. Those of the Temmei period were called "old *sanden*;" those of Tempo, "Tempo *sanden*" or "new *sanden*." In an enactment of the feudal lord, in the 2d year of Bunkwa (1805), it is said: "There are in the fief of Sendai many deserted houses and lands. Plots left vacant during the last 3 years will be treated as *hommyo-sanden*;[2] those becoming vacant after this year ought properly to be treated as *sanden-nami*.[3] But as the number of farmers at present is so small, we order that land becoming *sanden* within the next 3 years shall as before become *hommyo-sanden*."[4] In the 5th month of the 4th year of Bunkwa (1807), it was enacted: "Where a plot of land is *sanden-maye* and it is worth 300 *mon* or more, the substitute-farmer who cultivates it shall be entitled to exemption from taxation, and may be given other *sanden* to cultivate, if the first be not enough to occupy him. If several persons are placed there as substitutes, the land will be apportioned equally between them. The exemption will last for 5 years." In the 5th month of the 9th year of Tempo (1838), it was enacted: "For some

1. We are still left uncertain as to the exact force of the *maye*, (see p. 62). But the context of the above passages indicates that *maye* is a general synonym for *mochidaka*, or possessions. 2. That is, given to a man to cultivate for himself. 3. That is, given to the village to cultivate for the common benefit. 4. Perhaps because a larger income was obtained by this plan.

time past the desertions have been numerous, and the deserted plots have been entrusted to[1] the deserter's village or company, because if we treat them as *sanden* the tax-income will diminish.[2] But now, as there is no help for it, we have decided to treat such plots as *sanden*. If we make trust-land out of them, and impose all the regular services thereon, the farmers will be ruined; for even before the famine came, many of them were scarcely able to support themselves. Nowadays, with the famine and the lessening of the number of cultivators, matters would grow much worse. It is the duty of administrators to take measures to relieve this distress, and it is orderd that hereafter deserted land shall become *sanden*, not trust-land. A man shall be free to cultivate it or not, as he pleases; the term shall be 3 years, and for that period no services shall be imposed." In the 1st month of the 1st year of Genji (1864), it was enacted: "The famine of Tempo resulted in the desertion of many plots of land, and these were made *sanden*, with an exemption for a term of years. The term having expired, they should now be treated as ordinary lands; however, another extension of 3 years is granted. The lands deserted since last spring are also to become *sanden*. At the end of the term they are to become trust-lands, and new tenants are to be appointed to cultivate them. These plots being numerous and widely scattered, the inspectors must now begin gradually to survey and examine them all, deciding which are to be rated as ordinary lowland and appointing substitute-farmers to cultivate them. But in every case the exemption is to continue for 3 years longer, as poverty still oppresses many of the farmers and severe measures on our part would only bring them to ruin. Such a result would be as painful to us as it would be distressing to them."

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1. *Azuke-chi*. 2. Because *azuke-chi* was subject to all the ordinary services, *sanden* was not.

II.

CUSTOMS RELATING TO MORTGAGES IN RIKUZEN PROVINCE.[1]

The rules of the fief for the regulation of mortgages were very strict. The reason for this severity was the desire to prevent the accumulation of land in the hands of the rich and the impoverishment of the poor. In the 8th month of the 1st year of Kyoho (1716), it was enacted: "Where a debtor pays at the appointed time, the creditor shall restore the land received as security." Where a debtor is unable to pay his debts, he shall give notice to the officials, naming the land, if any, which he has mortgaged. They will then notify the creditor that the land is not to be forfeited, but is redeemable whenever the debtor offers to pay the debt. In the 2nd month of the 10th year of Kyoho (1725), it was enacted: "Farmers may pledge their land." In the 7th month of the same year it was enacted: "If the privilege of pledging land is freely given to farmers, as hitherto, it will end by a few men obtaining the real control of the land. For this reason it is necessary to restrict the power of pledging. Yet as this is the only method by which the poor are able to raise money for their undertakings, we cannot make an absolute prohibition. Hereafter the parties must draw up an instrument, describing the extent, situation, value, and production of the plot. An official certification of the correctness of these recitals is to be made on the village-register and on the parties' instruments. The term should not exceed 2 or 3 years. If the pledgor discharges his debt when due, the land shall be restored to him. If he defaults, he must pay off the debt by yearly instalments, beginning with the succeeding year." In the 7th month of the 14th year

1. From the same "History of Taxation, etc."

of Kyoho (1729), it was enacted: "A mortgagor will not be allowed to abandon his land to the mortgagee. Nor will a mortgagee be allowed to force the debtor to pay otherwise than by yearly instalments. The forfeiture of land pledged will result in the poor losing the ownership of their lands; and the mortgagee is not allowed, unless he owns less than 5 *kwammon* of land,[1] to have pledged land forfeited to himself, even if the mortgagor is unable to pay by yearly instalments. What shall be done in such a case will be determined by the lord when the case arises."

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1. This was the maximum value permitted to any one farmer. For the rules in Sendai fief on this subject, see Part V., Appendix.

MATERIALS FOR THE STUDY

OF

PRIVATE LAW IN OLD JAPAN.

EDITED, WITH NOTES AND AN INTRODUCTION,

BY

JOHN HENRY WIGMORE.

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MATERIALS FOR THE STUDY OF PRIVATE LAW IN OLD JAPAN.

PART I.—INTRODUCTION.

PART II.—CONTRACT: CIVIL CUSTOMS.

PART III.—CONTRACT: LEGAL PRECEDENTS.

SECTION I: MONEY LOANS; LETTING AND HIRING.

SECTION II: SALE.
(*In preparation.*)

SECTION III: DEPOSIT, PLEDGE.
(*In preparation.*)

PART IV.—CONTRACT: COMMERCIAL CUSTOMS.
(*In preparation.*)

PART V.—PROPERTY: CIVIL CUSTOMS.

PART VI.—PROPERTY: LEGAL PRECEDENTS.
(*In preparation.*)

PART VII.—PERSONS: CIVIL CUSTOMS.
(*In preparation.*)

PART VIII.—PERSONS: LEGAL PRECEDENTS.
(*In preparation.*)

MATERIALS FOR THE STUDY

OF

PRIVATE LAW IN OLD JAPAN.

PART III (SECTION I).

CONTRACT: LEGAL PRECEDENTS.

Curtis.

ERRATA.

Page 6, note 4,
" 16, " 4, } for "Introduction" read "Part I."
" 129, " 2,

" 10, last line,
" 11, lines 3, 9,
" 29, " 7,
" 53, " 19,
" 58, " 1, 17,
" 219, " 26, } for "house-master" read "house-manager."

" 9, note 8, for "bales" read "*koku*."

" 18, line 21, after "*Disposition*" insert "*of*."

" 22, note 1, *dele* the fifth sentence "Apparently * * * * both parties."

" 28, note 6, line 2, for "This" read "The former."

" 127, lines 4, 8, 10, " "shall" read "should."

" 145, line 15, after "communicated" insert "[8]."

" 180, note 2, line 1, for "is" read "was."

" 202, line 11, for "provisional" read "discounted."

" 202, note 3, *dele* the sentence "*Shita* sometimes * * * bill;" and insert "This term was applied to bills drawn by merchants against goods shipped (say) from Osaka to Yedo and discounted by the consignors at an Osaka bank. The *shita* ("below") represents the idea of discount."

" 208, line 16, at the beginning, insert "(1)."

" 218, between lines 13 and 14, insert "Kwansei, XI, 1 (February, 1799)."

" 382, line 17, for "October" read "September."

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" VI.—Arrears of Judgment Instalments... 345
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CHAPTER I.

LETTING[1] AND HIRING.[1]

SECTION I.—MONEY.[2]

[No. 1] *Judgments in Actions on Money Loans.*[3]

1. *Resolution*[4] *of the Chamber of Decisions.*[5]

Dated Kyoho, XIV, 12 (February, 1730.)[6]

"Disputes[7] about claims based on money loans, unpaid purchase-money,[8] etc., and contracted during and since Kyoho, XIV, 1 (February, 1729) shall be taken cognizance of and adjudged according to the practice previous [to the Nullification Order of Kyoho I (1716)].[9] When an action

1. *Tai* (lend)-*shaku* (borrow). It would seem that there is in Japanese no such clear distinction in terms as that designated by the Roman *locatio-conductio* and *commodatum*, or indicated, though not with strict constancy, by the English *let* and *lend*, *hire* and *borrow*, and *taishaku* applies indiscriminately to both. The gratuitous loan, however, seems usually to have been transacted under the term *azukeru*, which is strictly a deposit, and *taishaku*, in the present connection, answers to the term above used. 2. *Kin* (gold)-*gin* (silver). 3. *Shaku-kingin*. Strictly, *shaku* is a borrowing; but the corresponding English term names the transaction from the creditor's side. As will appear later, there is some doubt as to whether *shaku-kingin* is not sometimes used in a wider sense, meaning "money claims" in general. On the whole there is probably no such use. But, as the cases

No. 1] in this section show, the procedure in actions on money loans was different from that in actions on pledges, deposits, bills of exchange, and a number of other claims. The money-loan action became a type, and the procedure in other sorts was from time to time assimilated thereto and was referred by the Courts to that category. Hence, though the term "money-loan" seems hardly to have been used in the sense of "money-claim," yet the action on a money-loan was a typical one, and money-loans headed the list of a class of actions treated in the same manner. The term *kane-kuji* (money action), the exact meaning of which is yet uncertain, seems nevertheless to have been a generalized term, applying to the class of actions of which the money-loan was the type and deriving its importance from the characteristic procedure of the class. On the other hand, *shaku-kingin* (money-loan), as it occurs in the cases below, very often has the restricted meaning of "ordinary money-loan;" for loans from funds of certain sorts or for purposes of certain sorts were specially named, as will be seen,—because in some instances claims were made successfully for a special treatment on these grounds, while in others the same claim had been made unsuccessfully. Thus *shaku-kingin* has three senses: (1) Money loans in general; (2) an ordinary loan, not from a special fund or for a special purpose; (3) a type of actions including most or all of the money-actions and marked by a special procedure. 4. *Moshiawase*. 5. *Hyojo* (decision, judgment)-*sho* (place, room). For an account of this highest Court, see Part I. 6. That is, the 14th year of the period Kyoho, and the 12th month. The Western dates here given are taken from Mr. Bramsen's invaluable "Japanese Chronological Tables." English dates before the change of calendar in 1752 may be corrected by the reader, as Mr. Bramsen begins his Gregorian dates in 1582. Where only the month of the year is named in the Japanese text, if the first day falls after the middle of the Western month, the ensuing month is given; if before the middle, the month as recorded in the Tables. 7. *De-iri* (going out and coming in). The reference is probably to the hostility of the disputants, who refuse to stay in the same place with one another. *De-iri* is applied commonly to disputes resulting in litigation; *kuji* is the action or lawsuit itself. 8. *Kai-kakari*. 9. In order that the allusion, as well as the significance of the Resolution may be understood, it will be worth while to turn to No. 28, and read the first document or two, and then to read in succession the other precedents referred to in that case, viz., Nos. 1, 5, 13, and 99. The present Resolution operates to remove an order of suspension or limitation (here termed "Nullification Order") passed 14 years before. The text of the cases mentioned above, particularly of No.

is brought[1] and the parties have appeared[2] on the day appointed for the hearing[3] by previous indorsement of the Court on the plaintiff's complaint,[4] the Court is to order a 30-day term[5] [in which payment is to be made], and furthermore [if immediate full payment is impossible] a payment by instalment[6] on the last day of successive 30-day terms. If the debtor is remiss in his payments, he is to be put into handcuffs; and if he still continues in arrears, then an order for execution in bankruptcy[7] must be issued.

28, 1, will indicate the nature of these orders. They seem partly to have served the purpose of a statute of limitations, but chiefly to have aimed at the relief of the debtor class by extinguishment of a portion at least of their debts, the means being an order to the parties to settle privately. It is a characteristic trait of Japanese society that under the circumstances the creditor should be able to effect any real compromise and not be entirely evaded by a debtor whose obligation the Court had refused to enforce. The result attained by these orders (which were extremely few in number) was the relief of the community from a congested state, a relief for which we forestall the need by our statutes of bankruptcy; but in Japan bankruptcy meant as a rule such social degradation, such an ending of one's career and a destruction of the family life (this is to be seen in the customs recorded in Part II), that it was an extreme resource, an individual phenomenon, and never operated, as it does with us, to give constant relief as needed. For this reason, perhaps, these Nullification Orders became social necessities. This theory is corroborated by the fact that until 1842 (No. 28, 1, *infra*) there seems to have been no definite and invariable rule limiting actions to a prescriptive period of years. 1. *Uttayeru*. 2. *Makari* (a verb-stem used in combination with other words, without apparently affecting their meaning, except to give an air of sternness and severity to what is said, and thus much used by officials)-*deru* (come forth). 3. *Toriatsukai*, lit., transaction, management. The Magistrate by indorsement of the complaint at once decided the taking cognizance of the suit and appointed the day for hearing it. 4. *Sō* (suit)-*jō* (letter). 5. *Kiri* (cut, limit). 6. *Kiri-kin*. 7. *Shindai kagiri*. See Part II. Neither "execution" nor "bankruptcy" alone describes this process, and the above term seems to be the least objectionable. For further elucidation of the method, see No. 28, *infra*, and Part VI, which contains a Section on the subject.

No. 1. These rules apply to townspeople and farmers. As to military gentry,[1] the same procedure is to be followed for the 50-day term and payment by instalments, but no imprisonment or bankruptcy shall ensue.[2]

These rules have all been in practice up to the present time, and they are henceforth to be observed with more strictness than has been usual, beginning with all suits begun since Kyoho. XIV.

As to interest.[3] If in an acknowledgment of a money loan interest is named in the body of the document and close to the principal amount,[4] it shall be taken up[5] by the Court; but if it is named at the end and appears to be an after-insertion, an inquiry into the circumstances shall first be made."

2. *Precedents recorded in the office of the Town Magistrate of Yedo.*

Dated Kampo, I, 7 (August, 1741.)

"In regard to actions founded on the following claims:

Ordinary money loans;
Unpaid purchase-money;[6]
Ground-rent;[7]
Shop-rent;[8]

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1. *Bushi.* This term will be used to indicate the various grades of *samurai* regarded as a single class. 2. For the methods to be substituted, see No. 12, *infra.* 3. *Ri* (profit) (money)-*kin.* 4. *Taka.* 5. *Tori-ageru.* The above is the literal meaning of this word, and it will henceforth be used as an equivalent of "take cognizance of," "exercise jurisdiction over," "recognize the validity of"; it has moreover a peculiar application, not exactly corresponding to any of those terms, and yet apparent enough from the context. 6. *Ure-kake-kin.* 7. *Ji* (land)-*dai* (price). 8. *Tana* (shop)-*chin* (fare for hiring).

Prayer-fund loans;[1]
Patent-fund loans;[2]
Advances on behalf of another;[3] and
Loans for taxes due in advance:[4]

the court shall order a 80-day term, and, if at its expiration the debtor cannot pay, then a payment by instalments.

But the following claims:

Bills of exchange;[5]
Wages for labor;[6] and
Earnest-money;[7]

differ from private money loans,[8] and full payment without delay must be required.

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1. *Tera-kata* (Buddhist temple)-*shido-kin*. This was money contributed to a temple to pay for prayers for dead ancestors. Ordinarily such a gift exceeds nowadays 100 *yen*. The interest pays the expenses of the prayers offered perpetually on the anniversary of the ancestor's death. 2. *Kwan-kin*. See *infra*, No. 9. 3. *Tatekaye-kin*. 4. *Sennobei-kin*. A *daimyo* often secured his borrowings by pledging the rice tax of his fief, and sometimes, for greater security, the peasants were ordered to pay in advance the tax of the succeeding year or two. The above term indicates either a loan to a *daimyo* secured by a promise of the advance-payment of the rice-tax; or a loan to a farmer who has been ordered to pay in advance and is obliged to borrow for the purpose. The latter is the more probable meaning. 5. *Kawase-kin*. 6. *Shokunin* (workman, artisan)-*tema* (labor-time)-*chinkin* (price). 7. *Tetsuke-kin*. 8. *Aitai shaku-kin*. *Aitai* (sometimes pronounced *sotai*) is used to designate a private transaction, i.e., one not needing a public authentication or registration, and hence opposed to pledges, land-transfers, etc. It has already been said that *shaku-kingin* (money loan) is the typical claim in a class of actions differing in procedure from pledges of realty, etc. Now this passage and a few others indicate that the *aitai* or non-official nature of these transactions is the quality which in Japanese jurisprudence united these various actions. This is in harmony with the nature of the practical distinction between the two great classes, for the *shaku-kingin* class was enforced with great leniency to the debtor and was even subjected to the Nullification Orders already mentioned; while the other class was given a comparatively speedy

[illegible] The practice already followed shall be continued in regard to the receipt of dividends from the profits of any undertaking,[1] where the document bears the joint seals of the various parties.

If a suit for money due is brought against a farmer, and the real obligor is alleged by the former to be an esquire,[2] the esquire shall not be so regarded even if he appears to have been the real borrower, unless the instrument of loan bears the indorsement of the esquire or the attestation of one of his deputies.[3]

No. 2. *Money loans, [illegible] to be with document [illegible]*

Dated Kyoho, XIV. 12 February, 1730.

Those who have taken part in mortgages, loans, etc., where the amount is left in hazard or is to be repaid in double, are *[illegible]*: and the Court is not to give judgment for repayment, nor is to impose fines[4] on both parties and witnesses. No distinction of liability is to be taken between creditor[5] and debtor,[6] but the fine shall be determined strictly according to the personal circumstances of each.[7]

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remedy and *does not seem to have been subjected to those Orders.* A perusal of the various precedents will show how the members of the two classes altered from time to time. Historical progress must be kept in mind in reading these precedents; and in No. 28, dealing with the same subject, one perceives the more complex character of Japanese commerce 100 years later.

1. *Wari ai.* 2. *Toku* (produce)-*yo* (use). 3. *Uke-oi*, especially, an undertaking to construct buildings or other large works. 4. *Jito.* See Introduction. 5. See No. 28, 2, Art. 16, *infra.* 6. *Haku* (white)-*shi* (paper)-*tegata* (note, deed). 7. *Bai* (double)-*kin.* This is probably a Resolution of the Chamber of Decisions. 8. *Ka* (fault)-*ryo* (price). 9. *Kin* (money) *shu* (master, person). 10. *Kari* (borrow)-*nushi* (same as *shu*).

[No. 3] *Disposition*[1] *of an Action by one who has suffered Local Exile*[2] *and seeks to enforce a Claim for Money Lent*[3] *to a Resident of his former Domicile.*

A Resolution of the Town Magistrates of Yedo, in Full Session,[4] upon a Consultation[5] by the Town Magistrates of Osaka.

Dated Kyoho, II, 4, 2 (May 12, 1717).

"Where a person suffers exile from his locality, but has a claim against a person residing there and petitions for its payment, the petitioner[6] himself of course cannot re-enter the place, so that the Court cannot take up a suit brought by him. But if he transfers[7] his claim to a relative or a servant or some other person of his household, and the transferee[8] brings suit, the Court will take it up, and after investigation give judgment.[9] The above was resolved by the Town Magistrates [of Yedo] in Full Session, on being consulted by the Town Magistrates of Osaka.

The disposition of actions where the defendant suffers local exile should also be compared."

[No. 4] *Money Loans.*[10]

A Proclamation[11] of the Chamber of Decisions.[12]

Dated Yenkyo, III, 8 (May, 1746).

"We hear that lately, owing to pecuniary distress, many dishonest methods of lending money have come into vogue, and that oppressive clauses are inserted in the

1. *Tori-atsukai.* 2. *Tokoro-barai* (exile from a particular village, town, or ward). 3. *Kashi-gin.* 4. Probably the two Magistrates and their chief clerks. 5. *Hyogi-sho.* 6. *Negai-nin.* 7. *Yuzuri-watasu.* 8. *Yuzuri-uke* (receive)-*nin.* 9. *Saikyo.* 10. *Kin-gin taishaku.* 11. *On-furegaki.* 12. Cited from "*Kempo Buryo.*" These references are to the books containing the decisions and other precedents.

No. 4] instruments and usury[1] is taken. This is not to be allowed, and we order a reform in these matters. Hereafter, when we have given judgment against a defendant, and after default have ordered payment without fail, whether he be of the gentry, the priesthood, or the townspeople, we shall investigate to see whether there has been anything improper,—oppression by the creditor, usury, or failure to give the debtor a receipt upon settlement and subsequent entry of action[2] for the amount; and we shall punish the creditor as the circumstances require.

Nowadays there are many persons who lend money upon deeds of sale of houses, storehouses, or sundry utensils. This differs from the transaction of house-pledge,[3] nor does the instrument bear the seal of the headman, so that it is in fact only a hypothec; and we shall give judgment as in the case of [ordinary] money loans.

But sales of boat-shops or of hair-dressers' shops do not come under this rule.

This is to be made known in all the wards.

3rd month."

[No. 5] *Disposition*[4] *of Actions upon Money Loans.*[5]

Dated Yenkyo, III, 3 (May, 1746)

1. *Kō* (high)-*ri* (interest). 2. *Shusso suru*. 3. *Iye-shichi*. 4. *Tori-sabaki-kata*. 5. Probably a Resolution of the Chamber of Decisions. See No. 28, 1. The head-notes of the cases, here printed in italics, seem usually to have been made up by the compilers of the collection. The description following it, naming the sort of document, the date, and the parties writing and receiving, is sometimes by them, sometimes by the present editor; it has been inserted, when lacking, because of the greater convenience to the reader. It is not always possible to tell from the text whether the headnote is by the compilers of the Judicial Department or by the original Tokugawa clerks who put together the documents in the volumes cited as sources; in the latter case the headnote would bear somewhat the same relation to the documents as that of the headnote of an official Reporter in the United States. The portions unmistakably belong-

1. [Ordinary] money loans :[1]
2. Prayer-fund loans :
3. Patent-fund loans :[2]
4. Loans on hypothecs :[3]
5. Advances on behalf of another :
6. Loans for taxes due in advance :
7. Wages for labor :
8. Earnest-money :
9. Dowry-money :[4]
10. Unpaid purchase-money :
11. Investment-loans :[5]
12. Loans secured by deeds of deposit[6] of utensils :
13. Loans secured by deeds of sale[7] of articles :
14. Loans to Government vassals[8] and Government merchants,[9] secured by hypothec of ground-rent or house-rent of residence-land received from the Government :

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ing to the original text are enclosed in quotation marks; except the headings of the different documents of a single Number, where each document usually contains a superscription indicating its nature. The dates are of course usually found in the original; but where there is a single document only, the date is placed in the headnote only, especially as it is not always possible to tell whether it belongs in the document. 1. *Shaku-kingin.* 2. See *infra*, No. 9. 3. *Kakiire-kin.* 4. *Jisan* (brought property)-*kin;* usually the money brought into the family by the woman or the man on the occasion of a marriage; but sometimes also the sum brought by an adopted son. 5. *Shiire-kin;* this term is somewhat obscure. *Shiire* conveys the idea of an investment, a stock bought for re-sale, a sum laid out. *Shiire-kin* probably means money borrowed for the purpose of investing, or money advanced by the wholesale-dealer to the producer. 6. *Azuke-shomon.* 7. *Uriwatashi-shomon.* 8. *Go-ke-nin,*—petty *samurai* belonging to the Tokugawa house, their income being less than 300 bales of rice. They served often as police, keepers, stewards, etc., and were as a class overbearing and untractable, looking down on all vassals of other families as inferiors. 9. *Go-yo tashi-chonin* (merchants assisting Government undertakings). These were rich towns people, who lent money to the Government, and were accorded the privilege of sword-bearing and endowed with a piece of land.

No. 5. [Claims arising from transactions of the above sorts occurring before Yenkyo I (1744) shall not be taken up;][1] but for those occurring during and since Yenkyo I the Court shall issue a summons[2] for the 4th or the 21st day of the month and order payment within a 30-day term. If any arrears, however small, remain at its expiration, a payment by bi-monthly instalments shall be ordered. If the debtor is still in default, an order of execution in bankruptcy shall issue.

If a debtor fails to appear[3] on summons or is in [wilful] default after being ordered to pay, he shall, if one of the military gentry, be reported to the Council of State, or if of the priesthood, farmers, or townspeople, be punished. Moreover, where money has been illegally loaned, the creditor shall be punished as circumstances require."

[No. 6] *Issuing of an Order for Evicting*[4] *a Tenant pending trial of a Money Action*[5] *against him.*

A Reply of Magaribuchi, Lord of Kai, Town Magistrate of Yedo, to a Consultation by Makino, Lord of Osumi, Town Magistrate of Yedo.

Dated Anyei, VII 8, 18, (October 8, 1778).

1. *Letter of Consultation.*[6]

"From Makino, Lord of Osumi;

It has been the custom that wherever a tenant of house or ground is sued on a claim of money lent, the house-master[7] cannot petition for an eviction without under-

1. This must be supplied. See No. 28, 1. 2. *Yobi-dashi.* 3. *Fusan suru.* 4. *Ji* (land)-*date* (expel), *tana* (shop)-*date.* 5. *Kinsu* (money)-*deiri.* 6. *Go-sodan-sho.* Cited from "*Kakitome.*" 7. *Iye-nushi.* There is some difficulty in determining the meaning of this word. Literally it should mean "house-master," and to-day it signifies "house-owner." But it

taking[1] responsibility for the claim. But we learn that this rule causes much hardship to land-owners[2] and house-masters,[3] and it is reported that there are evil-disposed tenants who, when they perceive their house-master about to petition for their eviction from the house or the ground, intentionally[4] cause a money-action to be invented. So that henceforward may we order an eviction from ground or house without an undertaking of the action by the house-master,—providing that this rule shall not apply to the trial[5] of any other kind of suit?[6]

8th month, 6th day."

2. *Answer.*

"I think that hereafter you may well proceed as your letter suggests.

8th month, 18th day.

Magaribuchi, Lord of Kai."

[No. 7] *Judgment requiring, after investigation, that a Feudal Lord or Esquire shall pay a Money Loan*[7] *contracted by Farmers with the District-seals.*[8]

A Resolution of the Chamber of Decisions, in Full Session.[9]

Dated Kwansei, II. 2, 11, (March 26, 1790).[10]

1. *Proposal.*

"When farmers have taken a loan,[11] giving an instru-

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was in old days applied to a sort of bailiff, the agent of a large land-owner (who might be a noble) in a town, having the general superintendence of the letting of houses and lands, and virtually all-powerful in those matters. He was often known as *oya* or "parent" of the tenants, exercising a paternal care and influence, and making a prominent figure in the local community.

1. *Hiki-ukeru.* 2. *Ji-nushi.* 3. *Iye-nushi.* 4. *Waza-waza.* 5. *Gimmi.* 6. *Kuji.* See *infra*, No. 28, 2, Art. 28. 7. *Kingin-taishaku.* 8. *Gō-in.* For the extent of the region called *gō*, see Introduction. 9. *Ichi-za.* 10. Cited from "*Ko-hari-gami.*" 11. *Shaku-yo.*

No. 7] ment with the district-seal, and the creditor brings a suit for repayment, making defendants[1] of the joint-sealers, the Full Chamber shall indorse the petition, summon the farmers, and try the matter. If the farmers plead[2] that the debt is in reality a debt of the feudal lord or esquire, and if, although there is neither official seal[3] nor indorsement[4] of the feudal lord or the esquire or a retainer nor a collateral document,[5] a retainer[6] on being summoned affirms, in accordance with the farmers, that the debt is that of the feudal lord or the esquire, and that the latter undertakes it, then an order of payment shall be issued against the feudal lord or the esquire.

If the farmers assert the debt to be that of a feudal lord or esquire, and a retainer of the latter disputes[7] this, the court shall accept the statement[8] of the retainer. In such a case, even though the debt appear to be in reality [that of the lord or the esquire], it shall not be decided[9] to be his debt, unless the instrument bears his indorsement as well as the official seal of the local official, and the farmers shall be ordered to pay."

2. *Rubric.*[10] "We concur in the above views, following our practice in the case where a debt entered in the day-book[11] of a creditor is not attested by the debtor's seal; the rule in that case being that, although the law does not permit us to declare the claim a valid one, yet, if the debtor admits positively[12] the arrearage and his admission tallies with the creditor's statement, we shall order payment, but that if the debtor disputes it, we shall not order payment."[13]

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1. *Aite* (opposite party). 2. *Moshi-tateru.* 3. *Okusho.* 4. *Uru-sho.* 5. *Soye-shomon;* that is, given by one of those persons. 6. *Kerai.* 7. *Moshi-arasou.* 8. *Moshi-kuchi.* 9. *Sadame.* 10. *Shu* (red)-*sho* (writing). 11. *Hi-yose tsuke-komi-cho* (daily-miscellaneous-entries-book). 12. *So-i-naku.* 13. See No. 28, 2, Art. 16, for a rule on the same subject.

3. *Order.*

"When farmers borrow money upon an instrument bearing the district-seal, and the instrument bears the official seal or the indorsement of a feudal lord or esquire or his retainer, or a collateral instrument exists, if the creditor files a petition against the farmers, then the Full Chamber shall indorse the petition, summon and examine the farmers, then summon also the retainer, and after a trial order the feudal lord or esquire to pay.

Note, that if the above official seal or indorsement exists, an order of payment may be made to the feudal lord or esquire, even though [the creditor] does not petition for such an order.

The above resolution has been taken at a Full Session."

[No. 8] *Debts of a Temple-Incumbent*[1] *who has suffered Punishment.*

A Reply of Wakizaki, Lord of Awaji,[2] to an Inquiry[3] by Negishi, Lord of Hizen.[4]

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1. *Ji-in.* 2. Temple Magistrate from 1791 to 1818. 3. *Toi-awase.* The most common terms to designate the circumstances under which the documents came to be written are: *Moshi-awase* (resolution), employed of a concurrent determination by two or more persons, and here usually of the Chamber of Decisions; *sodan-sho* or *kakeai* (consultation), usually applied to a letter from one Magistrate to another; but *kakeai* is sometimes applied to letters from the retainer of a feudal lord to one of the Magistrates; *ukagai-sho* (request to a superior, here termed "petition"), properly employed for requests made by a private person to an official, by a retainer to a Magistrate, or by a Magistrate to the Council of State; *toi-awase* (inquiry), usually in communications between equals; *hyo-ketsu* (decision), and a few other terms, applied properly to adjudications of specific disputes; *fure* (proclamation), applied to all proclamations by authorities, but especially to *machi-bure*, regulations or laws posted for the information of the townspeople; *an* (proposal, bill), a proposition of law, made either to the Chamber or to the Council of State; *shita-an* (draft of a law) is used in the same connection. 4. Town Magistrate from 1798 to 1815.

No. 8] 1. *Inquiry.*

"Where the late incumbent[1] has left a debt, but has been punished for some reason and his succession[2] extinguished, should the present incumbent[3] be made to undertake the payment of the debt"?

2. *Answer.*

"In regard to your letter, I will say that when the incumbent of a Buddhist temple is punished and his succession is extinguished, the subsequent incumbent[4] is to undertake the debt, if it is one attaching[5] to the temple itself. There is a precedent[6] by which the successor was ordered to pay, when the former incumbent had suffered punishment, because the temple-seal had been used; so that in the case mentioned by you, if the instrument shows that the money was borrowed for the needs of the temple, we think it is just to order the successor to pay."[7]

[No. 9] *Order for the Payment of a Loan made by a deceased Zato*[8] *of the Blind, the Petition being filed by his Successor.*

A Decision[9] of the Chamber of Decisions, in Full Session.

Dated Kwansei, V, 5, 2 (June 10, 1793).[10]

1. *Memorandum of Consultation.*[11]

"Heretofore, when in instruments of debt taken by

1. *Sen ju.* 2. *Sei-dai* (lit. generations). 3. *Go-ju.* 4. *So-ju* 5. *Tsuki.* 6. *Sen* (former)-*rei* (customary rule). 7. No date. Cited from "*Chihō-kōsai-roku.*" 8. This was a class-name for the three highest ranks among the blind. Money-lending was one of the chief occupations of the blind, especially by those of the privileged classes. See, for some account of these ranks among the blind, Dixon, in Trans. Asiat. Soc. Jap., XIX, 578. 9. *Hyo-ketsu.* Yet the decision itself does not appear. But it is certain that the proposal was approved. 10. Cited from "*Fuhari-gami.*" 11. By one of the Magistrates.

zato the rank of the creditor (whether first or second[1]) and the words "and fellow-members"[2] or "and apprentices"[3] have been written in, and a clause has been inserted reciting that the money loaned is part of the "patent-fund,"[4] and at the creditor's death the son, mother, wife, or other successor has petitioned for payment, payment has sometimes been ordered, sometimes not, and the decisions are at variance.

It is true that if in the instrument the creditor is named as one person only (for example, 'So-and-so,' or 'So-and-so, a *Koto*') and there is no joining[5] of others (such as 'and fellow-members' or 'and apprentices'), the claim may legally be transferred[6] to an outsider,[7] and the latter may sue the debtor. But if the above terms are used, the instrument implies that it is to be transferred[8] to the apprentices or the fellow-members. Now, although the instrument may be worded at the pleasure of the parties so as to pass on death to either outsiders or other *zato*, yet in the above case certainly no outsider can claim the right to sue on the ground of being the general successor to the patrimony of the deceased.

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1. *Ken-gyo, koto.* 2. *Nakama.* 3. *Deshi.* This would be because loans or contributions had been received from these persons and a certain community of interest existed. 4. *Kwan-kin.* In order to attain the highest ranks, the Emperor's patent was necessary, and certain examinations were to be passed; but these latter might be omitted on payment of a fee, sometimes as large as 500 *ryo.* To obtain the necessary wealth was one of the great ambitions of every blind man. A store of money was set aside for the purchase of the patent, and gradually added to. Meantime, it might be increased by lending it out; and when this was done, the creditor could not be considered harsh or unjust if he rigorously exacted full and prompt repayment of a fund so important to his welfare in his profession. For this reason it became customary to recite, in all instruments of debt, that the money lent by the blind capitalist was a part of his [illegible] 5. *Kaki-kuwaye.* 6. *Yuzuri.* 7. *Shiro-to* (whi[illegible] of a trade or profession). 8. [illegible]

No. 9] Henceforth, then, we think, where the instrument, in a loan of patent-fund, in terms joins the apprentices or the fellow-members of the creditor, and the successor[1] or the assignee[2] of the claim is a *zato*, the judgment should be as heretofore; but where an outsider petitions as general successor, my opinion is that we need not order payment."

[No. 10] *Ordering Payment where the Instrument specifies on its Face no Term.*[3]

A Decision by the Chamber, in Full Session, upon a Consultation by Hachikano, Lord of Kawachi, as to a suit between Onishi Sonosuke, Manager of the Shogun's Ceremonial Tea Chamber and Purveyor of Tea-Vessels,[4] *plaintiff*,[5] and Mayeda Onoyemon, retainer of Matsudaira, Lord of Gemba, *defendant*.[6]

Dated Kwansei, III, 11, 21 (December, 16, 1791).[7]

1. *Consultation.*

"This suit began on the 4th day of the 6th month, and I have proceeded with the trial from time to time. In the instrument of loan[8] there is a statement to the effect that the debtor shall pay gradually, according as the adjustment of his affairs will permit, but that he shall not be negligent in the payment. Though no term is fixed, the debt is now in arrears for 18 years, running on by virtue of the above promise[9] as to gradual payment. My request is for advice as to whether I should order payment. I append a copy of the instrument."

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1. *Sozoku-nin.* 2. *Yuzuri-uke-nin.* 3. *Ki* (term)-*getsu* (month). 4. These titles were all honorary. For the scheme on which they were based, see Introduction. 5. *Negai* (beg)-*nin.* 6. *Aite.* 7. Cited from "*Kakitome.*" 8. *Shaku-yō.* 9. *Yakusoku.*

2. *Decision.*

"As to this suit, it has been decided by the Chamber, upon consultation in Full Session, that payment should be ordered."

[No. 11]. *Disposition of an Instrument of Loan*[1] *given by a Banished*[2] *or Absconding*[3] *Debtor.*

A Reply of Hatsukano, Lord of Kai, to a Consultation by Ikeda, Lord of Chikugo, as to a suit between Riyemon, householder,[4] of Shiba District, Katamonzen Ward, Block No. 1, *plaintiff*, and Takada Bunyemon and Yamada Onoyemon, former retainers of Tsumaki, Lord of Sado, *defendants*.

Dated Kwansei, III, 12, 6 (December 30, 1791).[5]

1. *Consultation.*

"The defendants, by an instrument bearing their joint names,[6] borrowed 40 *ryo*, in Horeki, IX (1759), and Bunyemon, by instrument bearing his own name only,[7] borrowed 50 *ryo* in the same year, from the said Riyemon. The latter has now filed a petition against the Lord of Sado, because it was stated in a clause of each instrument that the money was borrowed for the use of the debtor's lord. I sent the complaint[8] to the Lord of Sado, who has replied, 'That he does not remember borrowing either of these sums; that, as to the debtor Bunyemon, he had taken away his swords[9] in Horeki, X (1760), forbidden him to reside in Yedo, and banished him for misconduct; that, as to Onoyemon, he had absconded in Horeki, XIII

1. *Shubo-gi.* 2. *Tsuiho.* 3. *Shuppon.* 4. *Iye-mochi.* 5. Cited from [illegible] 6. *Ren-mei.* 7. *Ichi-mei.* 8. *So-jo.* 9. *Dai-shu*

No. 11] (1763); that the Lord of Sado had entered these events in the records of the proper office as they occurred; that when he borrows money for his own use he invariably indorses the instrument; that neither of the present instruments bears his indorsement; that in his opinion the statement of the two vassals as to the use for which the money was intended was of their own invention; and that therefore he declines to pay.' Now, if the borrowers of this money are discovered and sued,[1] well and good: but as this reply is doubtless correct, and as the whereabouts of the two men is not known, shall I make no order[2] as to the petition, and dismiss[3] the complaint, inasmuch as the Lord of Sado points out that the instrument is not indorsed by him, and that he does not recollect any such loan?

12th month."

2. *Answer.*

"In regard to your letter, I think that you had better refuse an order of payment and dismiss the complaint."

12th month.

Hatsukano, Lord of Kai."

[No. 12]. *Disposition Actions brought after the Limit*[4] *of Time for entertaining Suits.*

An Instruction[5] of the Council of State to the Chamber of Decisions.

Dated Kwansei, IX, 8, (October, 1797).[6]

1. *Letter.*

"It is of the greatest importance that you should so proceed in your cases as to make your conclusions in every instance correspond to the real merits,[7] no matter how long

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1. *Ai-kakaru.* 2. *Sata.* 3. *Kyoku-ka.* 4. *Kagiri.* 5. *On-kakitori.* 6. Citedfrom "*Furu-hari-gami.*" 7. *Jijitsu;* literally, "facts," "truth."

a time is spent in the inquiry, and especially now that a reform has been made in regard to the limitation of actions;[1] and it is your duty to see that the conduct of neither party shall impede the course of justice. Now, though we hear that the Shogun is shortly to make a new Proclamation,[2] and though in the meantime few suits may come before you, still it will be well for you to consult as to your private rules[3] in these matters; [and we make the following suggestions].

Where a payment by instalments has been ordered, but the debtor has brought into Court a less sum than is due, the proceeding hitherto in vogue is not satisfactory. Henceforth, if the debtor be a vassal of a 10,000 *koku* lord[4] or some other important person, you had better, if the circumstances demand, summon the Chief Seneschal[5] or some other important official, and order payment without fail. Doubtless it is impossible, merely by means of an order, invariably to secure complete payment on every occasion, and if the debtor alleges any unavoidable[6] hindrance, you may receive the excuse. But if this occurs three times or so, and you think that the debtor has been negligent in attending to the debt, then you shall call the matter to the attention of the official who appeared for the debtor;[7] and if any further irregularity occurs, you shall summon the Chief Seneschal, as above mentioned, and censure him and order payment. Before proceeding to this extreme, you should notify the debtor that the matter has reached such a stage, and then take the above step on receiving an acknowledgment of the receipt of the notice. Where

1. See the next precedent. 2. Of course the Shogun took no active part in the matter. This phrase means that the Council itself was preparing the measure. 3. *Nai* (private)-*kiku* (rules). 4. That is, a *daimyo* in the exact sense. 5. *Karo*. 6. *Yamu wo yezaru*. 7. No vassal or lord of any importance appeared personally in a court of justice, unless on important occasions. He was represented by some official.

No. 12. the debtor is a person of small estate or a holder of office,[1] and the case comes to extremes, notify him, as above, about summoning the Chief Seneschal or other officers, and if this does no good, make an order of payment without fail and address it to the Chief of his Bureau.[2] If he is under the direct control[3] of the Junior Council,[4] address the order to his fellow-officers; if he is the only one in that office, to those of the same rank;[5] if there be none, then to his family.

If after all this the debtor remains in arrear, you shall inform the Shogun, and he will make some order, which, we think, will induce proper conduct by the debtor. The creditor, as a usual and natural thing, is intent on winning his profit, and even heartless in attaining his end; but you must, in the trial, not forget [that he is merely seeking his due]; while as to the debtor, he ought constantly to remember his honor as a borrower, and you must instruct him not to forget what honor requires of him; and you must, in case of necessity, not fail to report him publicly to the Shogun, who will then make some order.

Such, we think, should be the private principles on which you should proceed. Consult among yourselves thoroughly, and deliberate on the proper rules, reporting thereon to us. It will not be too late even if you report after the issuing of the Proclamation before-mentioned. We especially urge you to communicate your views, because it would be highly regrettable if the present evil state of affairs should continue or grow worse, and we desire to discover some means of amendment."

2. *Answer.*

"We have perused your letter, and consider that it leaves nothing more to be said. We agree with its sug-

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1. *Kinshi.* 2. *Kashira shihai.* 3. *Jiki shihai.* This was to avoid disgracing so high an officer by a summons of debt. 4. *Waka-doshiyori*, the body next to the Council of State. 5. *Doretsu.*

gestions, and shall adopt them as a temporary system, until the Proclamation is made. After that we shall make a further investigation of the subject and report to you.

8th month.

Chamber of Decisions, Full Session."

[No. 13] *Disposition of Actions on Money Loans.*[1]

A Resolution of the Chamber of Decisions in Full Session.

Dated Kwansei, IX, 9, 13 (November 1, 1797).[1]

"As to suits upon money loans,[2] credit sales, farm-laborer's wages,[3] workmen's wages,[4] etc., it has been ordered that judgment shall not be given [by the Magistrates] in any such cases now pending, and that even suits [belonging to these classes] already taken up by them and adjudged shall not be further treated in any Magistrate's Court. Their disposition shall be as follows:

(1.) As to suits now in the course of trial before the Temple Magistrate, Town Magistrate, and Finance Magistrate, where payment within 30 days has been ordered, and as to suits to enforce satisfaction of a judgment for instalment-payments, the above Magistrates shall make orders in their Courts substantially as follows: As to suits upon money loans, credit sales, farm-laborers and workmen's wages, an order has been made that henceforth the Magistrate's Court shall not try all those hitherto tried, and shall therefore not render judgment in cases pending or on [motions to enforce judgments for] 30-day payment or instalment-payment. So that the parties in such suits shall settle the matters between themselves,[5] and when private settlement[6] has thus been made, no certificate of discharge[7] need be filed.

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1. Cited from "*Shoji-dome.*" 2. *Shaku-kingin.* 3. *Saku-ryo.* 4. *Tema-chin.* 5. *Aitai.* 6. *Naisai.* 7. *Sumikuchi-shomon.*

No. 13. 2.) If a Magistrate has already forwarded a first-seal[1] case [of the above classes] to the Chamber of Decisions, he shall, upon the appearance of both parties on the trial-day,[2] make order as above, and annul the complaint;[3] and the same shall be done when a private settlement is reached [in a pending case].

Note, that the complaint-instrument thus declared null is to be brought by the Magistrate to the Chamber, and there in the private room he shall cancel his seal.

(3). Where, in a fief held in trust for the Shogun,[4] or in the district of a deputy, an order for instalment-payment has been made, the Finance Magistrate shall order the official in question to frame his decision according to the

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1. *Sho-han*. This term is a difficult one, but seems to have the following import, according to the authority of *Koji Hikwan* ("Private Book of Suits-at-Law"). When a complaint was first entered, the Magistrate indorsed it, to the effect that the parties should endeavor to settle privately, by the mediation of their headmen, landlords, and companies, and upon failure in this should appear on the 7th day from date. If both parties were within the jurisdiction of the Magistrate, he tried the case himself; but if the defendant was not under his jurisdiction, the indorsement directed the parties to appear on the appointed day before the Chamber of Decisions, who then tried the case. The Magistrate, at the time of thus indorsing, affixed his seal, and the other members of the Chamber added theirs afterwards, presumably at the time of trial. Apparently a case where the defendant alone was under the jurisdiction of the Magistrate before whom the case was brought was assimilated to the case where both parties were. A "first-seal case" then meant one in which the defendant was not under the jurisdiction of the Court where suit was brought, and therefore a case in which the Chamber took original jurisdiction. See *infra, passim*. But several obscure points remain, which it is impossible at present to clear up. 2. *Sashi-bi* (appointed-day). 3. *Meyasu*. 4. *O-azukari-sho*,—that is, belonging to the Tokugawa family and administered by one holding under the Shogun as a vassal (usually an esquire), not merely as an administrative official.

intent of this order, and to annul the order for a payment term[1] and forward it to the Magistrate.

Note, that cases within the jurisdiction of the Temple Magistrate are to be investigated by him [on request of the Finance Magistrate], and a reply[2] made to the Finance Magistrate.

(4.) [In cases of the above-specified kinds] any order for a payment term or final-certificate[3] which has been delivered to the plaintiff shall be returned to the issuing Court and forwarded by it to the Chamber of Decisions [for cancellation].

Note, that this applies to payment orders made by a Magistrate in suits heard at Private Sessions.[4]

(5.) This Order is to apply only [to the ordinary actions] in which the established rule is to order an instalment-payment after 30 days;[5] and actions on house-pledges, boat-house hypothecs, hairdressers' hypothecs, arrears of wages of servants, money lent on pledges of reliable property,[6] bills of exchange, land pledge, rice bought and left

1. *Nichi-gen shomon*,—an instrument made upon rendering judgment and ordering payment by a fixed date. 2. *Aitatsu*. 3. *Oshi-kiri* (pushed to an extreme)-*sho* (writing),—the order for instalment-payments. See No. 51, 2, c, (12). 4. Until Kwanbun (1661-1673) the Council of State, the Censors, and the Magistrates had been accustomed to meet as a Court or Chamber of Decisions six times monthly. At that period a separation was made. The Chamber was attended by a Councillor on three days of the month, and the three Magistrates alone held Court on the other three days. The former occasions were called Formal Days (*shiki-jitsu*); the latter, attendances (*tachiai*), probably because only the attendance as a Censor by way of inspection was required. The sessions of the different Magistrates in their own Courts were called Private Sessions (*uchi-yoriai*). There were three of these monthly at the period above mentioned; but the term indicates that it was applied only to a meeting of the Magistrate and his chief clerks. Ordinary daily trials seem to have been termed *te-kagiri* (off-hand cases) 5. That is, that money loan class mentioned already in No. 1. 6. *Tashika-naru shichi-motsu*. The nature of the property is not clear.

No. 13, on deposit[1] shall be taken up, whether brought before this order or not.

Note, that where it is found on investigation that an alleged land pledge or deposit-sale of rice is not what it purports to be, but only a hypothec[2] and thus on the footing of an ordinary debt, an order is to be made refusing judgment, if the instrument was executed before the order.

(6.) No action upon a loan[3] made on or before the 20th day of the 8th month (October 19) of this year shall be taken up; but those brought on and after the 1st day of the 9th month (October 20) shall be taken up.[4]

(7.) In regard to actions on money loans to the Government,[5] loans from relief funds[6] belong to chief Buddhist temples or Shinto temples or other great temples, and loans from assistance funds[7] of inns, they shall be taken up and payment ordered.

Note, that where the person representing the Government temple or the inn has included in one of the above

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1. *Kai-adzuke-mai.* See Part II. p. 83, Echigo *kuni.* 2. The two hypothecs above named would thus be exceptions to the general rules for hypothecs. 3. *Taishaku.* 4. It would seem that the essence of this order was a limitation of claims existing before a certain period, with a quashing of all suits of certain classes entered before that period. The difficulties are as to the classes included. The classes as to which the rule of instalment-payment is here predicated do not quite tally with those enumerated in No. 1 or No. 5, but are probably assumed to be well known. The term "loan" in par. 6 refers to all the classes of suits previously ordered to be quashed. See the note to No. 1, *supra.* It must be remembered that a hypothec is always regarded as belonging to the class of ordinary loans, except in the two cases above mentioned. 5. *Kogi-o-kashitsuke-kin.* 6. *O-teate-kashitsuke-kin. Oteate-kin* was a sum of money bestowed by the Shogun on some individual or association nominally for the purpose of giving relief in some pecuniary emergency. These loans were made from such a fund. 7. *Josei-kin-kashitsuke kin.* In large towns there was usually a chief inn, at which *daimyo* and other travellers of high rank put up. The fund accumulating from their largesses was called *josei-kin.*

loans ordinary money of his own, an investigation is to be made as to what portion of the loan comes under the terms of this rule, and, in case of necessity, the matter may be referred to the Government for decision.

(8.) As the old instruments of debt supporting the claims in which orders of payment have already issued have been taken possession of and cancelled, and the creditor now possesses no proofs[1] of debt and would be hindered in the private settlement[2] [of the claims dismissed under this order], such instruments ought to be renewed by the debtor; and if the creditor petitions on the ground that the latter has refused to do so, the Court shall persuade him to renew it, pointing out that this order for private settlement has made it necessary: and if the creditor is still annoyed by debtor's delay, some punishment[3] shall, on consultation, be inflicted.

Note, that when such a renewal takes place, the instrument is not to be dated as of the present 9th month, but in such a way as to secure the paying off of the debt[4] in a reasonable time.[5]

The above Resolution has been passed by the Chamber of Decisions.[6] "

[No. 14] *Taking up a Complaint by a Person who has suffered Local Exile or by his Agent*[7] *against a Debtor in his former Locality.*

A Decisions of the Chamber of Decisions, upon an Inquiry by the Town Magistrate of Osaka.

Dated Kyowa, II, 5, 21 (June 20, 1802).[8]

"An inquiry has been received from the Town Magistrate

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1. *Shōko.* 2. *Aitai-zumi.* 3. *Togame*—ordinary meaning, "censure." 4. *Ko-shaku* (lit., old-loan). 5. That is, if the actual date of renewal were used, the creditor might have to wait for another long period calculated from that date. 6. "In Full Session" is omitted; but there seems to be no significance in this. 7. *Dainin.* 8. Cited from "*Kakitome.*"

No. 14 of Osaka as to whether a complaint of the above nature should be taken up; and upon deliberation the Chamber has decided as follows:

'If the creditor's exile was not accompanied by confiscation[1] of patrimony,[2] then a complaint filed by his agent to enforce payment of a loan[3] to a person in his former domicile should be taken up and indorsed; for as the actual plaintiff is the agent, it is not as if the creditor himself were reappearing in his domicile. Moreover, although a person exiled from all Yedo or from all the Three Districts of Osaka[4] cannot bring an action, even by an agent, because he cannot enter the Magistrate's Court, a person who has suffered local exile only has nothing to prevent his filing a complaint in the Magistrate's Court, for the only place from which he is excluded is the ward of his original residence. So that such a person may file a complaint, by himself or his agent, in a suit against a resident of his former ward, and we will take it up.'

The above Decision was reached, Kyowa, II, 5, 21."

No. 15 *Disposition of the Complaint*[5] *in a Money Loan Action against a Number of Retainers.*

A Reply of Nagate, Lord of Bigo, Town Magistrate of Yedo, to an Inquiry from Kobase, Lord of Nagato.

Dated Bunkwa, X, 8, 27 (Sept. 21, 1813).[6]

1. "A money loan action was brought, before the Lord of Nagato, by Chuzo of Hitachi *kuni*, Kuwayama village, against Oguri Shichirozayemon and ten other retainers;

1. *Tori-ageru*. 2. *Kazai* (family-property). 3. *Kashi-kin*. 4. Mere local exile kept a person out of his ward or district only, not out of the whole city. 5. *Sōjō*. 6. Cited from "*Furu-hari-gami*."

and the Lord of Nagato, finding no precedent[1] for the case of a suit brought on one complaint only against several retainers, made inquiry of the Lord of Bigo, whose answer was as follows :

'The usual practice is, when a complaint founded on a money loan is brought by a townsman against several retainers, that he must file a separate petition for each single demand,[2] no matter how many demands he may have, and the Court sends each petition to the Chief of his Bureau, or if he is a person under direct control [of the lord] summons a retainer of his and delivers the complaint to him.[3] '

Such was the answer of the Lord of Bigo. As to the manner of serving[4] the complaint, there has been no general rule ; but in future we will in all cases proceed in the above manner, in analogy with the procedure in case of suits by townsmen.

This was decided at a Private Session [of the Town Magistrate's Court] ".[5]

2. *Example of a Notice of Suit.*

"To Kobori, Lord of Shimosa.

From Kobase, Lord of Nagato.

As an action on a money loan has been brought by Chuzo, of Kuwayama village, Makabe *kori*, Hitachi *kuni*, against Nishikawa Yoyemon, of

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1. *Senrei.* 2. *Kuchi.* This word (literally, "mouth") has a number of derivative idiomatic uses. Here the sense of "item," "single head," is intended. It does not correspond exactly to our "count," nor yet to "cause of action." It signifies a single claim against a single person. 3. See No. 12, *supra.* 4. *Tasshu* (lit., communicate). 5. This Private Session would of course include the heads of staff and other clerical officers in the court.

No. 15] your Bureau,[1] we send you a copy of the complaint in a separate document. If the substance of it is without error, you had better direct Yoyemon that it would be well for him to try and make a private settlement,[2] and in any case, to report [to you] after serious deliberation.

8th month."

[No. 16 *Proceedings in an Action on a Money Loan against Retainers of the Hongwan Temple.*[3]

A Reply of Sakakibara, Minister of Imperial Revenues, Town Magistrate of Yedo, to a Consultation of Matsudaira, Lord of Idzu, Temple Magistrate.

Dated Bunsei, X. 4. 6 (May 1, 1827).[4]

1. *Consultation.*

"An action was brought before me by the Manager[5] of the Taisho Temple of the Jodo Sect, of Yuki *kori*, Shimosa *kuni*, against the Superintendent[6] and Deputies[6]

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1. *Kuji.* 2. *Nitsui.* 3. The Shin sect of Buddhists, the largest and most influential in Japan, has in all of the principal towns two chief temples called Hongwan. One is known as the Western, the other as the Eastern. 4. Cited from "*Shoji Kikitsume.*" 5. *Ko-shu.* 6. *Rin* (by turns) *ban* (watch); *rusu* (absence) *i* (dwell). This was an officer of government and superintendence, managing the affairs of believers within the district appertaining to one of the larger temples situated at Osaka, Yedo, etc. With him consulted the branch temples in all matters requiring superior sanction. Under the *rinban* were the *rusui.* This term was sometimes given to the officer of a *daimyo's* household, who superintended the family affairs during his lord's absence. But here it signifies the subordinate officers under the *rinban*, living in different districts and reporting as occasion arose. The *rinban* was only an administrative officer, not the chief of the sect; and the name seems to indicate that it was held in turn month by month by two or more persons.

and District-representative[1] of the Hongwan Temple, of Tsukiji district, Yedo. After examining the complaint, I found it stated that a sum of money borrowed by the Temple for the use of its kitchen is in arrear. I then examined the precedents, as the Hongwan is a temple of high rank [and the matter might need special treatment]; and among these I found the case of Gonzayemon, house-master,[2] of South Kaji ward, block No. 2, against certain retainers of the Hongwan Temple. This action was brought before Tsutui, Lord of Iga,[3] and he summoned them to appear[4] and join suit,[5] bringing their written answer;[6] but the retainers, it seems, forwarded a document asserting that, as the Hongwan Temple is in all ordinary matters on a special footing, it ought to be so also in this case, and in fact should be treated after the analogy of a feudal lord. I made further examination, but finding no precedent in my own Court, I inquired of the Superintendent to learn whether the officers of the Temple had ever appeared before any other magistrate in such a case. The Hongwan of Asakusa district replied that no such instance had occurred, but the Hongwan of Tsukiji district reported that in the 2nd month of the second preceding year Chiye, wife of Shinshichi, a house-renter of Kobei's, of Hongo district, block No. 4, had brought an action on a money loan against the retainers[7] of that Temple before Sakakibara, Minister of Revenues.[8] The latter summoned the retainers and ordered payment; but it ended in a private settlement. I accordingly asked the Minister of Imperial Revenues about this case; and he

1. *Hochu sodai.* This was a clerical officer who attended to the publication of Government proclamations or sect regulations among the temples of his district and to similar affairs. A district (called a *kumiai*) comprised 20 or 30 temples, and each *kumiai* seems to have had a representative. 2. *Iyenushi.* See note to No. 6, *ante.* 3. Town Magistrate. 4. *Makari-deru.* 5. *Kuji* (suit, claim)-*awa se* (cause to meet, confront). 6. *Hento-sho.* 7. In such a case they were of course sued merely as representatives of the temple. 8. The writers of the answer are the clerks of this Magistrate.

No. 16] answered that although there had been no precedent for this suit of Chiye, wife of Shinshichi, against retainers of [a temple such as] the Hongwan, yet it was the ordinary practice,[1] in suits by townspeople against temples, to summon the parties to the joint-pleading on the 7th day [after action began], and so he summoned both parties and ordered payment. But the defendants obtained a postponement of the day of payment, and during the interval they forwarded a document representing that, as the Hongwan Temple was in all ordinary matters on a special footing, it ought in this case to be allowed the same privileges as a feudal lord. The Minister of Imperial Revenues thought it doubtful whether they could be treated in such a manner, but as the joining of suit had taken place, and, during the interval for which the time of payment had been postponed, a private settlement had taken place, he sanctioned this disposition of the case. I learned also that it is the custom, in the Town Magistrate's Court, not to indorse the Complaint [as for military gentry], in suits by townspeople against temples, but to summon the parties to a joinder of suit on the 7th day.[2] This differs from the practice in our Court, and I have been debating in my own mind which practice is preferable. As the claim in question is not a private debt[3] of the Superintendent, retainers, etc., but is in fact, against the Temple itself, it seems unfair, even though the suit is nominally against those persons, to indorse in the same manner as against ordinary

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1. *Shikitari*. 2. It is not quite clear what distinction was here intended, and comments on these questions of procedure must be reserved for a later volume. The first alternative seems to refer to the method of summoning the military gentry. But it is believed that the summons and the taking cognizance of the case were always done by indorsement. Compare also "seven-day indorsement *only*," a few lines below. Hence "as for military gentry" or some such qualifying phrase must be supplied. 3. *Jibun-shaku*.

temples.[1] Moreover, as there may be inconvenience in reporting the matter to Kyoto,[2] if a seven-day indorsement only is made, I propose, therefore, that for the future, in suits against the Hongwan Temple, a summons shall be sent [to the Superintendent], with the complaint, ordering him to settle amicably[3] with the plaintiff, but, if this is not done, to forward an answer in writing. When this occurs a summary trial[4] shall be made and judgment shall be given.

I ask your advice as to whether this practice is a proper one.

4th month."

2. *Letter to clerks of the Temple Magistrate's Court, from clerks of the Town Magistrate's Court.*

"To

Hori Soyemon, Esq.,
Masuda Shirobei, Esq.,
From Mochizuki Yoyemon,
Yamanaka Chubei.

We have perused your letter,[5] in which you request a consultation and inform us that on the day before yesterday Matsudaira, Lord of Idzu, heard the action on a money loan against the Hongwan Temple, and that, upon a reference to the Chamber of Decisions, his course was affirmed; and that as his practice differs little from that followed by our Court in the case of military gentry, your Court will in future proceed on the same principle and as set forth in the accompanying enclosure; and furthermore that you think it very desirable for the two Courts to adopt a uniform practice on this subject. We reported your communication to the

1. It is difficult to see wherein a distinction lies,—unless it be that in the Hongwan temples money matters were in the charge of special officials, with whom consultation would have to be held, while in the smaller ones the financial managers and the parties summoned were identical. It must be understood that the chief difference in treatment would be the allowance of a longer time before trial. 2. The headquarters of the sect. 3. *Juku-dan.* 4. *Te-kagiri.* See No. 13, (4), *ante.* 5. Evidently a later one than the preceding.

No.16] Minister of Imperial Revenues, who examined the letter, and said that he saw no objection to proceeding as stated in the enclosure. That I now return, keeping a copy and sending the present reply by order of the Minister of Imperial Revenues.

4th month, 6th day."

8. *Enclosure.*

"When an action on a money loan is brought against retainers of either of the two Hongwan Temples, the complaints shall be taken up, and if it appears on the face of the instrument that that money was lent for the use of the Temple, the complaint shall be forwarded and served upon the defendant in the same manner as in the case of military gentry; and after 6 months [the Superintendent] shall be summoned and ordered to consult with the debtor, and, if settlement is not reached, the defendant shall be ordered to return the complaint within 2 days, and when he brings it, he shall be ordered to file an answer within a certain number of days. At the time of the joint-pleading[1] those persons against whom the action is brought shall appear; and at this point the trial of the case shall first be undertaken."

[No. 17]. *Payment by a Debtor who has suffered Local Exile.*

A Reply of a Private Session of the Court of Ishikawa, Steward of Imperial Waters,[2] Finance Magistrate, to a Consultation by Sakakibara, Minister of Imperial Revenues, Town Magistrate of Yedo.

Dated Bunsei, X, 11, 2 and 18. (December 19, 1827, and January 4, 1828.)[3]

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1. *Tai* (confront, together)-*ketsu* (decision). 2. *Mondo-no-sho.* This was an officer charged with inspecting wells and supplying water, ice, etc., at the Palace in Kyoto. 3. Cited from "*Shinharigami.*"

1. *Consultation.*

"Ought not the successor, if any, of a person who has suffered local exile, to undertake the debts of his predecessor, provided no forfeiture[1] of cultivated and residence land and of other property was made?"

2. *Answer.*

"We acknowledge the receipt of your inquiry. We understand you to refer to the case where the defendant suffers local banishment, and we searched for precedents on that point, but found none. We discovered, however, a case where this Court was asked, in Gembun, IV, 10, (November, 1739) whether a claim for money lent by one who was afterward sentenced to local exile was subject to extinguishment,[2] in which a negative answer was given, although the contrary rule would apply if a confiscation[3] of patrimony had accompanied the sentence, for this would include the money loan. A sentence of local exile has nothing to do with wife or son, so that the wife or the son may take the cultivated and residence land and other property, or, if there be none, the exile may be given the proceeds[4] of a sale of the property. Now, as even the claim of an exiled creditor is not extinguished, much less should the liability of such a debtor. In the latter case, the name of the debtor's successor, if any, should be substituted by the Court in the order for payment; and even if there is no successor, the Court should revise the instrument, (if confiscation has not occurred,) as soon as the debtor has fixed his residence, and deliver it to him, ordering payment without fail. But in Kwansei, VI, (1794) the defendant in a suit pending[5] before your predecessor, Ikeda, Lord of Chikugo, absconded,[6] and the Full Chamber decided (there being no preced-

1. *Kessho.* 2. *Uchi-yari* (throwing away or out). 3. *Tori-age.* 4. *Daikin.* 5. *Tabi-kakari-kuji.* 6. *Kakeochi.* Bankruptcy, in

No. 17] ent in which the wife or son had under those circumstances been ordered to be substituted in the order for payment) that in the future in such cases no substitution should be ordered, but the order for payment should be annulled. According to this it would seem proper in the present case to annul the order for payment. Yet if such a rule be established, it would not be just, in our opinion. In ordinary actions on money loans, we have customarily allowed the plaintiff to name the successor as defendant, where [the debtor has died and] a successor is in existence, and so in case of a pending action, when the absconder's successor is determined, it is but just to have his name substituted, and deliver it to him and order payment.

If you agree with these views, we trust that you will lay the matter before the Full Chamber, so that our practice for the future may be determined.

11th month."

3. *Letter from the Steward of Imperial Waters to Sakakibara, Minister of Imperial Revenues.*

Bunsei, XI, 1, 28 (March 13, 1828).

"You consulted us in the 11th month of last year as to the case of a debtor who has suffered local exile. We answered that we hoped to see a rule fixed for the future, not for that case only, but also for that of an absconding pending action brought, and requested you to lay the matter before the Full Chamber, if agreeable. We shall be glad to hear your views on this subject, and beg to ask your advice."

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the social system of the time, usually meant lasting disgrace and loss of caste. Departure to seek a livelihood in distant quarters was the only resource open to the bankrupt who wished to retrieve himself, and the absconding debtor is hence a frequent figure.

4. *Answer.*

"I consulted you, as you say, in regard to local exiles' debts, and your answer suggested that payment should be ordered, which in fact accorded with my own view, and I made order accordingly. You also noted the case of a debtor absconding pending an action before my predecessor, Ikeda, Lord of Chikugo, in which the Full Chamber decided not to order a substitution of wife or son, which seemed to require me in this case to annul the order of payment; and suggested that such a general rule would be productive of injustice, and that where a successor has been determined, we should order him to pay; and proposed a reference to the Full Chamber. But what I consulted you about was not the case of a debtor absconding pending action brought, but a first-seal case;[1] and we were both agreed, as to this case, that payment should be ordered, and I did so order. So that as to this point no reference to the Chamber seems to be required. As to the other case you spoke of, I am myself not yet decided, and I think it more suitable to consult the Full Chamber when the occasion calls for it.[2]

2d month.

Sakakibara, Minister of Imperial Revenues."

No. 18. *Suits by a Creditor against the Successor of an Absconding Debtor.*

A Decision of the Chamber of Decisions, upon an Inquiry by Saga, Lord of Bugo, and Ishikawa,

1. That is, a case where the defendant is out of the jurisdiction of the Lower Court (in this case by banishment), and the case must be sent to the Full Chamber for trial. See *ante*, No. 13. This case seems to show that the Lower Court, though it did not try the case, might pass on such questions as whether the suit was maintainable at all, admitting the truth of the creditor's statements. 2. This particular question came up a few months thereafter. See the next precedent.

No. 18] Steward of Imperial Waters, Finance Magistrates.

Dated Bunsei, XI, 4, 2 (May 15, 1828).[1]

1. *Inquiry.*

"In cases where the defendant in an action for money lent[2] or unpaid purchase-money[3] has absconded, we have hitherto thought that we should not indorse the complaint, where the creditor sues the successor, because the whereabouts of the debtor may eventually be discovered and he may then be sued. This practice[4] of not indorsing in such cases originated perhaps in the idea that, even though a so-called successor exists, either there has been no determination[5] that he has in fact become the successor, or else, as sometimes happens, his house is extinct,[6] and one of his relatives assumes[7] his estate.[8] Moreover, the disappearance has taken place because of the debtor's adverse circumstances; so it seems doubtful whether a suit against the successor, supposing there were one, would be of any avail. In those cases where a debtor has died [pending suit], and his widow[9] has succeeded him, we have been accustomed to order the suit to be reinstituted against her, describing[10] her in the complaint as "Haru, widow of Taro," and alleging that a sum of money lent to the husband in his lifetime is due and unpaid. We have also made some investigations as to proceedings in similar actions against villagers.[11] In the last year of the Hare (1819), when Ishikawa, Steward of Imperial Waters, and Toyama, Warden of the Palace Gates, were Lawsuit Magistrates[12] in the

1. Cited from "*Shin-harigami.*" 2. *Kashi-kingin.* 3. *Ure-kake.* 4. *Shikitari.* 5. *Jitei.* 6. *Danzetsu.* 7. *Hiki-ukeru.* 8. *Ato-kata.* 9. *Goke.* 10. *Kata-kaki*, (lit., "making a shoulder-writing," i.e. writing the word descriptive of the person's status or rank). 11. *Zai-kata.* 12. *Kuji-kata kakari.* The Finance Department was in two sections, one of which managed the treasury proper, and the other the lawsuits falling under the jurisdiction of this Department.

Finance Department, there were a number of actions on money loans[1] in which the creditor, because the debtor had died or was otherwise unavailable and had left no estate, was suing the surety.[2] It was thought by the Court that the clause of the instrument "If the principal[3] shall be in arrears[4] etc," signified only the case where the principal, in his lifetime, utterly fails[5] to pay the debt; so that where the principal had merely absconded, and no successor exists, the creditor should wait until the whereabouts of the debtor was discovered [and then sue him]; and that therefore suits against the surety should thenceforth be taken up, the principal having absconded, only when the clause read "If payment by the principal is in any way hindered,[5] payment shall be made by the surety," and not otherwise, even where the principal had died. The matter was referred to the Full Chamber, and they came to the following conclusion: 'Generally, when a debt is secured by the addition of a surety's name, the purpose of having a surety is that he shall attend to the debt if payment is not made; so that the addition of a surety is to no purpose if the Court declines to order payment merely because there is no clause expressing the undertaking of the surety. The obligation of a surety, of course, lasts only during his lifetime [and does not descend to his successor], while that of a principal debtor who dies or absconds survives against his son, grandson, etc., if there be any patrimony[6] inherited. But when a debtor leaves no such successor, the Court should

1. *Kashi-kingin.* 2. *Shonin.* This signifies literally "witness". For the customs as to the existence or non-existence of suretyship obligations for persons signing as *shonin*, see Part II. 3. *Honnin* (chief person). 4. *Todokori.* 5. *Sashi-tsukayeru*, and *koshō kare-ari* are the respective words. The meaning is ordinarily much the same; but here the sense seems to be as above. Here the idea of the former phrase is apparently, that the debtor's estate should prove to be of no avail; hence his absconding or decease would still perhaps leave available means for the creditor. 6. *Iye-kabu* (family-stock).

No. 18] order payment by the surety, if, after examining the circumstances under which he became surety, it considers that he ought to be regarded as liable,—and this in spite of the absence of any clause expressly undertaking liability. In answer to the argument that we ought not to hold him liable without such a clause,[1] it may be said that, if we should refuse, [creditors would be loath to lend], the money circulation would diminish, and undesirable results would follow. It appears better to order payment by the surety without distinguishing between the clauses "If the principal shall be in arrears, etc," and "If the principal's payment is in any way hindered."'

Such was the decision of the Full Chamber. In the present case, too, we think that it would be unjust if the creditor could not sue the successor, even though the debtor's non-payment is owing merely to his having absconded. However, if on this principle we decided that a relative who assumes charge of the estate and acts on behalf of the debtor in his business or in his cultivation is liable for all the debts of the fugitive as "undertaker of the estate,"[2] then nobody would ever be found to perform such offices, and the result would be many waste estates. In such a case, therefore, the rule should be as hitherto, that the mere undertaker is not to be charged with debts. But henceforth, when a suit is brought by the creditor against the son or other alleged successor to the estate of the fugitive, the plaintiff should consult with the officers of the defendant's village, and obtain from them a certificate of identity[3] of the defendant, bearing the names and seals of the village officers and certifying that the defendant has succeeded to the estate of the fugitive; and if the

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1. See, part II, Chap. II, for references to the fact that *shonin* might sometimes be regarded as surety, sometimes as a mere witness only. Hence the desirability of an express clause of suretyship. 2. *Ato-hiki-ukenin*. 3. *Seimei-gaki* (description of names).

plaintiff can show such a document, he may go on with his suit.

We think that the rule should be thus, and [we have the less hesitation in coming to this conclusion because] there can be no objection, since the order of the last year of the Horse (1822) respecting money loans, unpaid purchase-money, etc., on the part of village officers to forwarding the necessary certificate of identity.

We therefore make the above proposal.

4th Month.

2. *Decision.*

"Decided in accordance with the proposal, Bunsei, XI 4, 2, (May 15, 1828)."

[No. 19]. *Action against the Surety for a Loan, the principal Debtor being a Retainer who has been exiled by his Lord and whose House is extinguished.*

A Reply to a Private Consultation[1] by Watanabe Sanzayemon, a retainer, on behalf of Suwo, Lord of Ise.[2]

Dated Bunsei, XII, 3, 6 (April 9, 1829).

1. *Consultation.*

"A member of this fief,[3] with a member of another fief, borrowed a sum of money, on a joint instrument,[4] from a certain woman. But as the money was for the use of the

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1. *Uchi-kakeai.* 2. A *daimyo* in whose domain this case had arisen. 3. *Han.* This term is in fact, however, a compound of he ideas of "clan," and "fief" implied. 4. *Ren-in shomon.*

No. 19] outsider only, he sealed and gave to the former an instrument engaging that he would keep him harmless. This outsider was afterwards punished by his lord for some offense and sent away to his native province; and his house subsequently became extinct.[1] The creditor, relying on the terms of the instrument, which provided that either remaining one of the joint debtors should assume and pay the debt, made a demand[2] upon the man of this fief. The latter made efforts to compromise and begged the indulgence of the creditor, but the creditor threatened to bring suit if even the interest was not paid in entirety. Now the creditor knows well that the money was used by the other man only, as above stated, but she has not brought action against him, because he lives in banishment in a distant province, and also because, as his house is extinct, there are no children to be sued. In these circumstances it would no doubt be proper enough for our clansman to pay the claim, but the fact is that it is quite beyond his ability to do so. The creditor sent a petition to the lord of the debtor who had really used the money, but it received no attention; and now she is on the point of suing our clansman, having no other resource but to take this step. I should add that the clansman affixed his seal to the instrument, not of his own motion, but at the special request of the other man, who needed the money for the performance of a pressing service of great moment to his lord's interests.

How this matter will be disposed of by you, if suit is brought, is the question. I submit the following queries:

(1.) If a suit is brought against this clansman, his lord's name will be disgraced by the publication of such an affair. May the lord punish him for this? Or, if he be yet under the control[3] of his parents, may they not be made to disinherit[4] him? And if so, would his parents or his successor be liable for the debt?

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1. *Danzetsu.* 2. *Saisoku.* 3. *Kakari.* 4. *Kando.*

(2.) If the suit is begun, the debtor will thus be brought under the authority[1] of your Court; and by virtue of that fact may not the lord or his parents then treat him as they please, without getting permission?[2]

(3.) If an action is brought before you against the user of the money and a certificate of his punishment by his lord is presented to you, will you take it up?

(4.) If, without that, an action is brought against the clansman here, will you, on petition of the clansman, use your efforts to have the official of the other man's fief pay the claim? or will you decline to take cognizance unless the plaintiff brings suit against the exile in your Court?[3]

I beg to submit these questions privately to you.

Watanabe Sanzayemon, a retainer, on behalf of Suwo, Lord of Ise.

Dated 2nd month."

2. *Answer.*

"I acknowledge the receipt of your letter.

(1.) You state the case of a man who has borrowed money jointly with a man of another fief, with the engagement that either remaining one shall discharge the whole debt. The outsider was subsequently punished by his lord and his house became extinct. He had, it seems, given the former an instrument stating that the money was solely for his own use and engaging to keep the other harmless. But this was a matter of private arrangement[4] between the parties [and cannot affect the creditor]; we should therefore go by the terms of the instrument, and order the joint debtor to pay.

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1. *Koye-kakari* (voice-utterance, i.e., control, authority.) 2. Permission of the Government was in theory necessary in all cases before capital punishment could be inflicted by a *daimyo*. But why it was here necessary does not appear. 3. The suit against the exile must be brought in the Yedo Court, before the Chamber, because the parties were under different lords. 4. *Aitai nai-gitei.*

No. 19] (2.) If an action is brought against the joint-debtor of your fief, it will not be just for either the lord to punish or the parents to disinherit him until the case has been tried by the Court; much less can they do as they please with the body of the accused during the trial; although if his offence were an unpardonably heinous one, they might do so on securing proper permission from this Court. After trial and judgment, he may be punished according to the family custom[1] of the lord's house, as one who has cast public disgrace upon his lord's name. As to the other point, when the creditor sues the parents or sues the successor of the house[2] for the debt, we usually order payment, provided the punishment of the lord does not affect the existence of the house; but we do not, if the house is extinguished.

(4.) As the other man, who used the money, has been punished by his lord and his house is extinct, if the creditor institutes an action against the other debtor, we shall not, on a petition by the latter, try to procure payment from the officials of the other fief."[3]

[No. 20] *Actions for Money Loans, Unpaid Purchase-Money, etc.*

A Proposal addressed to the Council of State by the Finance Magistrates.

Dated Bunsei, IV, 12 (January 1822).[4]

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1. *Ka-fu.* 2. *Kamei sozoku-nin.* 3. This answer to Qu. (4) seems to involve also an answer to Qu. (3). At first sight the reason for the last answer seems to be that an action against one joint debtor precluded a suit against another. But the proposed suit was to be by the joint-debtor, not by the creditor, and this negatives that supposition. Probably the banishment and house-extinction were conceived as leaving all creditors remediless against the defaulter. Hence the same negative answer would apply to Qu. 3. 4. Cited from "*Sambugyo Tori-hakarai-sho.*"

1. *Proposal.*

"Many vicious practices are current nowadays with respect to suits for money loans, unpaid purchase-money, etc. For example, the creditor sometimes sends to Court some person skilled in litigation [to represent him], pretending that he is a dependent of his, either a relative or a servant. We have of course been very careful and have punished such conduct where detected; but the creditor disregards the Court's indorsement [directing him to make a private settlement, if possible] and goes on with the suit without approaching the defendant for this purpose; so that it often happens that [judgment is given by default against] a deceased or fugitive debtor or a person wrongly named. Again, some institute unfounded suits for some petty arrearage against country people, knowing that the latter, though they have no recollection of the claim, would rather pay some proportion of it in settlement than undertake the expense of coming to the City[1] to defend the suit. Moreover, we hear that sometimes a person takes advantage of the poverty or ignorance of another, and in lending him money takes an instrument of pledge, stipulating for a usurious interest, and afterwards alters the arrangement into a contract of renting.[2] Such transactions tend to increase more and more the distress of the unfortunate petty-

1. Yedo. 2. The apparent meaning is that the creditor, by threats to a poor debtor or by false pretences to an ignorant one, procured his assent to the change in the instrument. On failure to pay a pledge of land, the creditor, on foreclosure, often rented it to the former owner; thus the transaction would on its face look natural enough. The object was apparently to shut out the debtor from the possibility of redemption,—an important matter, as ordinarily the time for redemption was a very long one (see Part II., "Pledge and Hypothec,") —and perhaps also to increase the amount paid as interest by calling it rent. *Kosaku-mai* is the word for "rent." On this word, see Part II, *passim.*

No. 22] [No. 22] *Disposition of Actions for Money Loans or Purchase-Money where after Indorsement*[1] *the Plaintiff or the Defendant Absconds.*

A Reply by the Finance Magistrates and the Temple Magistrates to a Consultation by the Town Magistrates, Sakakibara, Minister of the Imperial Revenues, and Tsutsui, Lord of Iga.
Dated Tempo VI, 7 (August, 1835).

1.[2] *Letter from the Finance Magistrates.* "In reply to your letter, we think that you may give judgment just as you have proposed, now that the plaintiff Yoshimatsu has absconded. But, before doing so, we think that a delay of 6 months ought to be ordered, in order that he may be discovered and apprehended, if possible.

3d month.

Naito, Captain of the Imperial Body-Guards.
Okusa, Lord of Noto."

2. *Letter from the Town Magistrates.* "We have read and deliberated upon your reply. The fact is that our usual proceeding, in case the plaintiff in an indorsed action on money loans or for unpaid purchase-money has absconded, is to send the plaintiff's ward-officer and the defendant over to the Chamber of Decisions, and direct that the action be not tried;[3] and this has been our regular practice, so that, if we suddenly changed it and ordered a 6 months' discontinuance,

1. That is, after the case has been taken up and the parties summoned for hearing before either the Magistrate's Court or the Chamber of Decisions. 2. This correspondence took place between the Town Magistrates and the Finance Magistrates respecting a case which came up before the former. 3. As the next sentences show, the writer has in his mind chiefly first-seal cases,—that is, cases in which the defendant is from without the jurisdiction of the Town Magistrate's Court and must be tried by the Chamber of Decisions.

much confusion might occur. The defendant, too, would suffer great annoyance, in being detained in Yedo without trial, or in being sent back to his village subject to a new summons in 6 months or so, for he must incur no small expense in making the journeys, especially if his village be a distant one. Besides, we ought not to try any claim made by such a person as an absconder, even if he is ultimately discovered and apprehended. For these reasons, our practice hitherto has been to order a dismissal of the action as soon as the absconding becomes known, and we have no precedent allowing a six months' interval. We shall feel it necessary, at least in the suit now before us, to adhere to our former practice.

3rd month.

Sakakibara, Minister of Imperial Revenues,
Tsutsui, Lord of Iga."

3. *Letter from the Finance Magistrates.* "You explain that it has been customary with you, where the plaintiff in a money action absconds, to order a dismissal, and that it would be very inconvenient were this custom to be supplanted by a rule requiring a discontinuance of 6 months. We think that you are right. But, on reviewing the precedents to which you referred us, we find that in these cases the rule you follow is applied without distinction between the absconding of a plaintiff and that of a defendant (either in principal[1] or in money[2] actions), and that in both

1. *Hon* (original, chief)-*kuji*. The two classes here mentioned probably correspond to the two classes discussed in the notes to No. 1; on this supposition *kane-kuji* includes actions on loans, hypothecs, etc.; *hon-kuji*, actions on pledges, land-transfers, actions to determine boundaries, etc. There is to be a section in the volume of precedents on Procedure, entitled "The difference between *kane-kuji* and *hon-kuji*"; but at this writing the volume has not yet been compiled and the material is inaccessible to the editor, so that the final solution of the riddle must wait for a while. 2. *Kane-kuji*.

No. 22] cases you make immediately an order of dismissal. We are desirous to see a uniformity, if it be possible, in the practice of the different Courts, and we made inquiry of the Lord of Shimosa, as to the practice before the Temple Magistrate. He replied, That your custom of making no distinction between the absconding of plaintiff and of defendant, though settled as far as you are concerned, has not yet been the subject of a general agreement of the Courts, so that it cannot be regarded as unchangeable; That it would be better if in a Private Session of your Court you resolved to refuse further cognizance of the suit of an absconder (for the reason that one who, after suing out an indorsement from a Court, runs away because he is afraid he will lose his suit or because he cannot pay the expense, does not deserve the aid of the Court), even if he returns; But that where the defendant is the absconder, you should postpone judgment for several months, during which interval the absconder might be apprehended.

Such was the reply of the Lord of Shimosa. We ourselves are also of the opinion that we certainly ought not to take cognizance of the suit of a person who is so unconscionable as to abandon it after suing out the indorsement of the Chamber, especially on account of the inconvenience which the defendant suffers through a postponement. But it is different where the defendant absconds, since, if a postponement is ordered until the absconder is apprehended, a defendant, if he found his excuses insufficient or his means of payment lacking, might abscond merely for the purpose of delaying the suit. Of course, in principal actions, there are sometimes cases in which the actual appearance of all parties is necessary, so that they may plead in each other's presence. But such cases are rare, and exceptional cases may be treated in an exceptional manner. For ordinary actions, whether principal or money actions, we may lay down the general rule that when the plaintiff absconds, the Court shall immediately give judgment for the dismissal of the suit.

This seems to be the opinion of the Temple Magistrate also. We trust that it will receive your concurrence.

5th Month.

Naito, Captain of the Imperial Body-Guards.
Okusa, Lord of Noto."

4. *Letter from the Town Magistrates.* "When, in an action on a money loan or for unpaid purchase-money indorsed by us, the plaintiff[1] has absconded, it has been our custom to make an order of dismissal for the defendant, without allowing any interval for searching after the absconder. We learn, however, that your practice differs, and indeed there has never been any joint regulation attempted by us on the point. We should not think it unjust to follow your practice to make the order of dismissal conditional on the non-appearance of the plaintiff after 6 months' search. There are, to be sure some cases in which the plaintiff, having agreed with the defendant for a private settlement and received a part of the composition-money,[2] is himself dunned by his own creditors, and is forced to fly or to conceal himself before receiving the whole. Yet in most cases the absconding of the plaintiff is due to the fact that his proofs[3] are dubious or his character[4] is sus-

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1. *Sosho-kata.* 2. *Naisai-kin.* 3. *Shōko-butsu.* 4. *Mimoto.* This term is difficult to reproduce in one word. A man's *mimoto* is good or reliable where he has a fixed residence and occupation, has not committed any crime, has well-known and reputable antecedents, etc. His *mimoto* is bad or suspicious where he has no fixed calling, changes his residence frequently without cause, has come in contact with the police, belongs to nobody knows what family, etc. The personal registration which has been customary for so many hundred years is a means of ascertaining a man's *mimoto.* A broker on the Rice Exchange pays in advance a *mimoto-hoshō-kin*,—that is, a deposit as security for good behavior—before admission into membership. *Mimoto* is, in effect, "character," somewhat in the sense that we speak of a servant's "character."

No. 22] picious; so that, although he may have his account-books[1] or an instrument of debt or some other evidential material in his possession, he cannot bring a suit anywhere and the debtor has no longer anything to fear. Besides, even though we might discover him within the 6 months, surely we ought not to further the purposes of one who has become an absconder. Indeed, the probability in such cases is that, were we to examine his proofs or his character carefully, we should find that he ought to be punished. Then, too, it might happen that he would return with some plausible excuse, and say [for example] that he went on a short journey, but fell sick or broke his leg and was unable to come back for a while; so that we should be obliged, though doubting, to accept his story and to order payment, with possible injustice to the defendant. For these reasons we have hitherto been accustomed to give judgment for the defendant without delay. We imagine the difference in your practice results from the fact that you have in your Court so many suits about boundaries,[2] fisheries,[3] pasture-land,[4] aqueducts and drains,[5] etc., the more important of which involve, not merely a single plaintiff and defendant, but all the people of a village, so that, even though 3 or 5 of the plaintiffs or defendants abscond, you would not for that reason order a dismissal of the case.[6] But we do not have such cases before us.[7]

Now, as to the case of a defendant absconding. When, in an action against several defendants, some of them abscond, it would generally be vain to require the remainder to search

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1. *Chomen*. 2. *Sakai-chi*. 3. *Ryo-ba*. 4. *Makusaba*. 5. *Yo* (useful)-*aku* (filthy)-*sui* (water). Probably these were among the chief classes of the *honkuji*. 6. *Gimmi-sage*. 7. The writers are the Town Magistrates, and their litigants were chiefly tradesmen. The Finance Magistrate had jurisdiction over the litigation coming in from the provincial deputies, and thus over most of the land litigation. See No. 48, *infra*.

for the absent ones and produce them in Court; and we have been in the habit of merely discontinuing the suit, and allowing it to be reinstituted when the missing persons are discovered. Here the plaintiff of course suffers some delay. Still he will discover the absent defendants sooner or later. Doubtless their families, or their sureties, or other persons acting for them, will often make a private settlement and then petition us to declare the absconders exempt from further liability to be apprehended. Or perhaps the plaintiff may inform us that the missing persons are concealed in a particular village, and thus he has certain means of discovering them. In either of these cases a temporary discontinuance suffices, because, in the former, a final judgment can be given, based upon the terms of the settlement, and in the latter the defendants may be immediately discovered and apprehended. As a general rule, then, the following seems on the whole a satisfactory one. When in any action, whether a principal or a money action, a defendant absconds and is not immediately apprehended, a temporary discontinuance shall be ordered.

We now offer you our views and ask your advice.

6th Month.

Sakakibara, Minister of the Imperial Revenues.
Tsutsui, Lord of Iga."

5. *Letter from the Temple and Finance Magistrates.* "You have already consulted the Finance Magistrates on the point of absconding parties, and with special reference to a case pending before one of you, the Lord of Iga, in which one Yoshimatsu, of Yedo, Honjo district, Yoshida ward, block No. 2, had sued one Ishijiro, of Kadzusa *kuni*, Hamajiku village, with 72 others, the plaintiff Yoshimatsu having absconded. The Finance Magistrates, after a consultation with the Temple Magistrates, answered, 'that the absconding of the plaintiff amounts to a defiance of the indorsement of the Court which he himself

No. 22. had just sued out,[1] and no Court ought to take further cognizance of an action instituted by such an offender, and that the Court should neither detain the defendants longer, nor cause them to return home with the liability of appearing again when the plaintiff is discovered.' In such a case, the Court acts for the benefit of the defendants, the plaintiff being the culpable one. Now, where the defendant absconds, the case is just reversed. You propose that in such cases the Court should order a temporary discontinuance, with leave to sue again when the absconders are apprehended. But this, we think, would lead to much inconvenience. For instance, when a defendant finds that his excuses are insufficient, or that he has no means of payment, he has merely to run away, knowing that this will effectually delay the suit. It is true that, in principal actions, there may be cases which require the actual appearance of all parties. But these are rare, and an exceptional case must be treated in an exceptional manner. In ordinary actions, whether principal or money actions, we can hardly be justified in making a general rule to order a discontinuance when either party absconds; though in cases where the absence of the defendant does make it impossible to go on with the trial, the plaintiff should petition the Court to discontinue the suit temporarily, with the prospect of resuming it when the defendant is apprehended; and if the plaintiff, through ignorance of the law, fails to make such a request, the Court should point out to him the proper course. In that case we should not give final judgment refusing to order payment [on account of the defendant's absence] until after several months have elapsed.[2]

7th Month.

The Temple Magistrates.
The Finance Magistrates."

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1. *Negai-ukeru.* 2. The preceding passage is obscure, but this seems to be its meaning.

6. *Rubric, by the Town Magistrates.*

"In accordance with the above reply, the Finance Magistrates on their side agree to give up the practice hitherto in vogue of allowing a discontinuance for 6 months when the plaintiff absconds, and we, the Town Magistrates, agree on our part to abolish our practice of ordering a temporary discontinuance when the defendant absconds."

[No. 23] *Action on a Money Loan against a Vassal punished by Exile to his Province and by House-Imprisonment.*[1]

An Inquiry made by Okusa, Lord of Awa,[2] and an Answer by Tsutsui, Lord of Kii.[3]

Dated Tempo, X, 5 (June), 1839.

1. *Inquiry.*

"Tempo, X, 1 (February, 1839)

To the Lord of Kii, from Okusa, Lord of Awa.

Yabei, the agent of Kin (on account of her sickness), member of the family[4] of the said Yabei, house-master,[5] of Tensho ward, [Yedo].....*Plaintiff:*

Kanai Shoji, retainer of Nambu, Lord of Tamba...*Defendant.*

The above suit was brought before me; but while it was pending, notice was received from Tsutsui, Lord of Kii, on the 1st day of the 11th month of last year, (December 17) that the defendant, by reason of evil reports of his conduct, had been dismissed from service [by his lord,] sent back [from Yedo] to the dominions of the Lord of

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1. *Tsutsushimi* (lit., to behave circumspectly). 2. Town Magistrate. 3. Town Magistrate; the person termed "Lord of Kii" in the preceding case. 4. *Dōkyo*,—indicating any person living under the same roof and forming part of the household, as a younger brother, poor relation, etc. 5. *Iye-nushi*. It has been already explained that this term sometimes differs from *iyemochi*. Here it signifies the manager of a large number of rented houses.

No. 23. Shinano, the chief of the main branch of his lord's family, deprived of his stipend, and ordered into house-confinement with a guard set over him, the retainers of the Lord of Shinano being directed to take charge of the culprit's family. Now the face of the instrument shows that the defendant borrowed the money for his sole use, as there is no joint seal appended. So I suppose it would be proper to dismiss the action, and in general hereafter if there be in such a case any joint-sealer or surety or person who has taken up the defendant's estate, to take cognizance of suits against such person only, and absolving from further liability the defendant who has been exiled to his province. On this point I ask your opinion.

5th month."

2. *Answer.*

"In regard to the subject of your letter, my opinion is that as the defendant has been sent to his province by way of punishment for some offence, it would be improper to recall him to Yedo because of a private obligation as to property borrowed.[1] I think that the action may well be dismissed, and that in cases where there is a joint-sealer or a person who has taken up the estate, the procedure should be as you say. Such is my answer.

5th month.

Tsutsui, Lord of Kii."

No. 24. *Taking Cognizance of an Action for Unpaid Purchase-Money or a Money Loan brought by one sentenced to Local Exile.*[2]

A Consultation between Okusa, Lord of Awa,[3] and the other Magistrates.

Dated Tempo, IX, 3 (April, 1838).

1. *Shaku-zai.* 2. Cited from "*Shoji-tome.*" 3. Then Town Magistrate.

1. *Inquiry.*

"From Okusa, Lord of Awa.
Tempo, IX, 2 (March, 1838).[1]

Teibei, renter of the house of Jimbei,[2] in South Daiku ward, [Yedo] ..... *Plaintiff:*
Hachinojo, farmer, of Sakanoya village, Tsuga *kori*, Shimotsuke *kuni*, in the income-fief[3] of Kobayashi Jirozayemon, and 96 others ..... *Defendants.*

The above Teibei, the plaintiff, was living in Shimotsuke *kuni*, Tsuga *kori*, Shikanuma post-town, in the fief[4] of Toda, Lord of Inaba, and in the intervals of farming he sold cloth. Sometime ago he was summoned to the office of the fief to appear as a witness in an action on a money loan, brought by Buyemon, of the same province, Kawachi *kori*, Utsunomiya town, Zaimoku ward, against Shichirōzayemon, of the same province, Yenga *kori*, Tamo village, and one other person. But Teibei was sick at the time and did not appear as ordered; whereupon he was ordered not to leave the town during the trial. But owing to the preoccupation natural to his illness he did not remember this order, and when after his recovery, he found himself beset by numerous importunate creditors, he determined to set out and collect the arrears due him in various quarters, and thus satisfy his creditors. He had heard no more of the trial and imagined that the matter was ended. Nothing came of his journey, and he therefore decided to sue his debtors here in Yedo. He communicated his intention to Zembei, the headman of the post-town, declaring that he should return and pay off his debts as

1. This is some date in the suit; yet not that of the entry of action, for that is said to have occurred in the 11th month. 2. Jimbei is the *iyenushi* of the house. See *supra*, No. 23. 3. *Chigyosho;* for the explanation of this term and similar ones, see Introduction. 4. *Ryo-bun.*

No. 24. soon as he obtained even a partial settlement with his own debtors. He procured from the headman privately a certificate of removal, left the town during the progress of the suit, came to Yedo, and took up residence in the shop of Yobei, in the premises of Kameya, in Hatchobori. While here he was cited, at the request of his lord, Toda, Lord of Inaba, before the Town Magistrate, Tsutsui, Lord of Iga, and sentenced to exile from his native town, Shikanuma. Teibei then moved from Hatchobori to the shop of Jinbei, in South Daiku ward, and in the 11th month of last year brought before me the above action for various sums unpaid purchase money and money-loans, against Hachinojo and 96 others. Now Teibei's act of leaving his own town amounts to an unlawful absconding,[1] and if we regard that consideration only, he is not entitled to indorsement and issue of summons by this Court. But he has been already punished for that offence by local exile and cannot return to his native place; moreover he has already been registered[2] as a citizen of Yedo. I am undecided as to whether I should indorse his complaint, and therefore seek your opinion.

3rd month, 13th day (April 7th)."

2. *Answer.*

"With regard to the subject of your letter, Teibei was, it is true, sentenced to local exile, but not to forfeiture of goods.[3] Now a sentence of local exile does not affect one's power of suing for debts due from persons not within the original district from which he is exiled. But an examination of the facts in this case shows that the plaintiff was endeavoring to collect debts from persons within his own district, when he procured the certificate of removal, came to Yedo during the trial of the lawsuit, and so forth. If, therefore, we were to allow this man to go about

1. *Kakeochi.* 2. *Nimbetsu-cho.* 3. *Kessho.*

with a complaint indorsed by us and bring suits for these loans, it would certainly be to lend assistance to law-breakers. Still we are not justified in ordering an extinguishment of the claim, in the absence of any sentence of forfeiture of property. We have sought for precedents on this point, but have found only one, a ruling of the Chamber of Decisions, in Kyoho, II (1717), running as follows: 'Where a person sentenced to local exile brings suit for the payment of a loan due from a resident of his original domicile, the Court shall not take coginzance, because the plaintiff has no right to enter the place. But if he transfers his claim to a relation, servant, or any person having some connection with him, the suit of the latter shall be taken up, tried, and judged.' In analogy to that case, if Teibei, the plaintiff here, transfers his claims to some relation or other person, and the assignee brings suit, you may of course take it up; otherwise, it should be dismissed.

3d month.

The Temple Magistrates,
Tsutsui, Lord of Iga,[1]
The Finance Magistrates."

[No. 25] *Payment by a Son of Debts of his Exiled Father.*

A Reply of the Chamber of Decisions to an Inquiry by the Trial Bureau.[2]

Dated Tempo, X, 1 (February, 1839).[3]

1. *Inquiry.*

"*Tami*, wife of Heibei, house-owner, at Block No. 4, Mita, [Yedo] ..... *Plaintiff*

1. The other Town Magistrate. 2. *Gimmi-kata*,—a bureau of the Chamber's clerks. 3. Cited from "*Shoji-tome*."

No. 25. *Inosuke*, house-master, son of Yanosuke, house-owner, deceased, at Block No. 4, Ta ward, Mita, [Yedo], and *Kinjiro* (formerly Kinzo),[1] tenant of a house of the above Inosuke ..... *Defendants.*

Seven years ago, in the 12th month, the plaintiff Tami lent the sum of 10 *ryo* to the above Yanosuke, as principal, with the above Kinzo as surety, and last year, 11th month, 30th day (January 14, 1839,) suit was brought against them for the arrears due. But it appeared in the suit that Yanosuke, in the 12th month of a preceding year, had been convicted of violent conduct[2] and sentenced to be flogged[3] and then banished from Yedo and the district for 10 *ri* around it. Now if in this case suit had been brought against [the son or] even the surety only, it ought not to have been taken cognizance of according to a previous decision.[4] But here Inosuke has taken up the succession of Yanosuke, his father, as well as the office of house-master, and has occupied his dwelling. This differs from the case of a father being sentenced to a heavy punishment with forfeiture of property and extinction of family, the wife and children being reduced to such poverty as to be obliged to separate, but one or more of the sons in the course of time building up a new family. We think therefore that the action may properly be brought against

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1. This is apparently the effect of "*Kinjiro koto, Kinzo.*" 2. *Koron uchi-kowashi*, which may refer to an assault or to destruction of property. 3. *Tataki.* See Mittheil. d. Deutsch. Gesells. Ostas., Heft 38, s. 370. 4. It seems necessary to suppose that the writer has in mind the fact that a confiscation of goods has been ordered or perhaps would ordinarily have been ordered in such a case. Not only is this indicated by the next sentences, but it is certain that the son and surety would have been liable unless confiscation had occurred. See Nos. 17, 18, ante. For the later rule as to a surety's liability where the debtor's property has been confiscated, see No. 28, 2, Art. 26, *infra.*

Inosuke, even though the debt be his father's, and that an order of payment may issue. But as we find no precedent to go by, we respectfully submit the matter to you.

1st month.

The Trial Bureau."

2. *Appended Note.* "We respectfully acknowledge your instructions to order payment by the defendant Inosuke.

1st month, 28th day.

The Trial Bureau."

[No. 26] *Money Loans.*

A Reply[1] of the Yedo Town Magistrates, to an Inquiry by Hasegawa Kinzaburo, a Councillor.[2]

Dated Tempo, XI, 8 (September, 1840.)

1. *Letter*, from Tanimura Zenzayemon, clerk to the Town Magistrate of the North, to the Town Magistrate of the South.

"Enclosed is a copy of our letter in answer to Hasegawa Kinzaburo, who made a Private Inquiry[3] of us. We have been directed by the Warden of the Palace Gate,[4] to lay the matter before you, his colleague of the South, and we trust that you will review our answer and pass an opinion upon it."

2. *Appended Answer*,[5] from the Town Magistrate of the South.

"We have looked through the documents you have

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1. Cited from "*Shoji-tome.*" 2. *Yoriai.* This term, according to Mr. Rudorff, was applied to all *Hatamoto* whose income ranked over 3000 *koku*, when they were not in active official service, and seems to have been an honorary dignity. See Note to No. 45, 3, *infra.* 3. *Uchi-toiawase.* 4. The Town Magistrate of the North. 5. *Sage-fuda.*

No. 26] sent, and, being quite in accord with your views, we herewith return them."

3. *Letter of Inquiry*, from Hasegawa Kinzaburo.

"(1) A sum of money is borrowed by some one, in the name of his lord, declaring that the money is to be applied to the latter's household expenses. The borrower dies without issue, and his family becomes extinct. The merchant-creditor demands of the lord the payment of the debt. But it turns out that the money was never applied to the lord's use, and the joint-seal[1] of the person named as the joint debtor in the instrument appears to have been a forgery,[2] as the person of that name knows nothing of the transaction. If in such a case the lord or the joint-sealer is unable to persuade the creditor of the groundlessness of his claim and the latter sues, how shall the case be dealt with? We respectfully ask your advice.

(2.) Suppose the facts to be the same as above, with the following variations. The joint-sealer, being a subordinate official, is commanded by the borrower, his superior officer, to affix his seal, and does so under this compulsion. Afterwards the borrower dies and his family becomes extinct. If a suit results, how shall it be dealt with? We respectfully ask your advice.

(3.) Suppose the same case as above, except that the joint-sealer has indeed some preliminary negotiation with the creditor about a loan, but in fact never affixes his seal, the impression being a forgery. The recital that the money is to be applied to the household purposes of the debtor's lord is also false and unauthorized. If owing to the insistence of the creditor a suit results, how shall it be dealt with? We respectfully ask your advice.

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1. *Ren-in*. This has been sometimes translated "counter-seal." In a document of debt, it seems to indicate a joint debtor, who may as between the obligors be the real beneficiary of the loan. 2. *Bohan*.

(4.) Suppose the same case, except that here the joint-sealer is a subordinate official, who, when on the point of visiting his native province, is directed by his superior officer to affix his seal to a blank document, on the pretex that it would be necessary to have the seal if a need for a loan should arise. Afterwards the superior does employ the document for raising money. In such a case, if suit is brought, how shall it be dealt with? We respectfully ask your advice.

8th month. Hasegawa Kinzaburo,
by his retainer Kato Yemon."

4. *Appended Answer*, by the Town Magistrate of the North.

"(1.) As the real borrower is dead, the action should be dismissed, if it appears that the alleged joint-seal is a forgery and that the money was not applied to the use of the lord.

(2.) Here, although the joint-seal was affixed by order of the superior officer, yet the fact remains that it was affixed, and the responsibility cannot be evaded. However we cannot finally answer until it appears whether or not the money was really applied to the use of the lord.

(3.) Here the alleged joint-sealer had some negotiation with the creditor, but the seal is in fact forged and the money was not applied to the use of the lord. The matter is not an easy one to decide, and we must consider it further before answering.

(4.) Here the joint-seal was affixed to a blank document at the request of a superior. Now although this was done because, as his superior declared, the seal would be necessary in case a loan should be made, yet the fact that the money so obtained was after all not applied to the use of the lord (even though really borrowed for the purpose) shows that the affixing of the seal under such circumstances

No. 26] was negligence in one so trusted as to be employed in the management of the household affairs. Now that the superior is dead, however, it is difficult to get at the facts, and we cannot give a final answer without further investigation as to whether the loan was in fact made for the household purposes."[1]

[No 27] *Payment of Loans of Many Years, Standing.*

A Reply by the Finance Magistrate to an Inquiry by a retainer of Matsudaira, Governor of the Capital.

Dated Tempo, XII, 7, (August, 1841).

1. *Inquiry.*

"We enclose copies of documents of sole indebtedness[2] executed some 30 or 40 years ago by the father or grandfather of certain persons now living. In each case the debtor himself has long been dead, and the present head of the family, a son or grandson, knows nothing of the indebtedness, and has never been asked to pay until the 2nd month of this year, when an action was brought in the North Court,[3] which you indorsed and ordered for private settlement. But a settlement is impossible, and we should like to learn whether you intend or not to take up and adjudge a suit based on such documents and brought one or two generations after the debtors are dead. We therefore forward copies of the documents and respectfully make

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1. The idea seems to be that if the loan was really contracted in the course of the management of the household, the joint-sealer must stand the consequences of his negligence; but that he is not to be visited with responsibility for a misuse of the document by the other official for the purpose of raising a private loan. 2. *Ippan-shomon* (one-seal document). 3. *Go-bansho.*

private inquiry as to the proper course to take, begging the favor of an appended answer.

7th month, 1st day (August 17).

Matsudaira, Governor of the Capital,[1]

by his retainer."

2. *Copies of the above documents.*

(1.)

"Memorandum.[2]

10 *ryo* in gold.

Owing to unavoidable necessities, I have borrowed the above sum.

Kwansei, XII, 10 (November, 1800).

Akichi Yasozayemon. [Seal]

To

Jisuke, Esq.,[3]

of the Ise House.[4]

(2)

Memorandum.

5 *ryo* in gold.

I certify that owing to unavoidable necessity I have

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1. It does not appear who this person is, but probably he is a feudal lord making inquiries of the Town Magistrate. 2. *Oboye.* Although this word sometimes means "perceive," its general meaning is "remember," and this latter idea seems preferable to the ordinary corresponding English terms ("take notice," "know") used in similar connections. 3. There seems no other word than "esquire" to express the "*sama*" which is here by courtesy appended to the name of the creditor by the debtor. The use of the term is the more noticeable as the debtor is a *samurai* and the creditor a merchant and one not entitled ordinarily to even a family name. 4. *Iseya.* This business name (*ya* being "house" or "firm") takes for merchants the place of the family name.

No. 27] borrowed the above sum. I shall without fail repay it in instalments from time to time.

Kyowa, III, 12 (Jannary, 1804).

Akichi Yasozayemon. [Seal]

To

Heizaburo, Esq.,
of the Ise House.

(3.)

Memorandum.

50 *ryo* in gold.

I certify that I have received the above sum, procured by you for me at my request.

2d month, 20th day.

Akichi Yasozayemon. [Seal]

To

Heizaburo, Esq.
of the Ise House.

(4.)

Memorandum.

5 *ryo* in gold.

This is to certify that I have borrowed the above sum of you.

5th month, 27th day.

Akichi Yasozayemon. [Seal]

To

Jisuke, Esq.,
of the Ise House.

(5.)

Memorandum.

5 *ryo* in gold.

This instrument is to certify that, owing to unavoid-

able necessity, I have borrowed of you the above sum.

Bunkwa, III, 7 (August, 1806).

Akichi Yasozayemon. [Seal]

To

Heizaburo, Esq.,
of the Ise House.

(6.)

5 *ryo* in gold.

This is to certify that, owing to unavoidable necessity, I have borrowed the above sum. I shall repay it without fail by the end of the year at the latest. This is given for the sake of future security.

7th month, 10th day.

Akichi Yasozayemon [Seal]

To

Heizaburo, Esq.,
of the Ise House.

(7.)

Money Borrowed.

200 *ryo* in gold.

Interest, 1 *bu* in 30 *ryo*.

I certify that, owing to an unavoidable mischance, I have been obliged to borrow the above sum. I shall without fail repay it, principal and interest, in the 12th month of the year of the Dragon.[1]

This instrument is given for the sake of future security.

Bunkwa, IV, 1 (February, 1808).

Akichi Yasozayemon. [Seal]

To

Heizaburo, Esq.,
of the Ise House.

1. Apparently the current year, but possibly 12 years later (1820).

No. 27]

(8.)

Memorandum.

7 *ryo* in gold.

This instrument is to certify that I have borrowed the above sum, furnished to me by you.

Bunkwa, VI, 3 (April, 1809).

Akichi Yasozayemon [Seal]

To

Jisuke, Esq.,

of the Ise House.

(9.)

Memorandum.

5 *ryo* in gold.

I certify that owing to unavoidable necessity I have borrowed the above sum of you. I will afterwards replace this by a formal document.

12th month, 31st day.

Akichi Yasozayemon. [Seal]

To

Heizaburo, Esq.,

of the Ise House.

(10.)

Memorandum.

20 *ryo* in gold.

This is to certify that I have borrowed the above sum of you.

Bunkwa, XII, 1 (February, 1815).

Akichi Yasozayemon. [Seal]

To Heizaburo, Esq., and

Jisuke, Esq.,

of the Ise House.

(11.)

Memorandum.

20 *ryo* in gold.

I certify that owing to unavoidable necessity I have

borrowed the above sum of you. Repayment is to be made by delivering to you monthly 8 bales of rice, beginning with the 1st month of the ensuing year of the Rat (1804), until principal and interest are paid. This is given for the sake of future security.

Kyowa, III, 12 (January, 1804).

Ohashi Muteyemon. [Seal]

To

Heizaburo Esq.,
Jisuke, Esq.,
of the Ise House.

(12.)

Money Borrowed.

100 *ryo* in gold.

I certify that owing to unavoidable necessity I have borrowed the above sum of you. I shall repay principal and interest without fail by the ensuing 11th month. This is given for the sake of future security.

Kwansei, X, 5 (June, 1798).

Kokuma Okuhei. [Seal]

To

Heizaburo, Esq.,
of the Ise House.

The above is correct.

(13.)

Memorandum.

20 *ryo* in gold.

I certify that I have borrowed the above sum.

12th month, 12th day

Sugaya Dannosuke. [Seal]

To

Heizaburo, Esq.,
of the Ise House.

No. 27] (Note, by the sender of the documents.

'The last two documents appear to have been executed prior to the order of the 9th year of Kwansei (1797), annulling certain claims.[1] Should they therefore be rejected ? ')

(14.)

Memorandum.

50 *ryo* in gold.

I certify that I have received the above sum ; I will afterwards replace this by a formal document.

3rd month, 2nd day.

Sugaya Dannosuke. [Seal]

To

Heizaburo Esq.,

of the Ise House.

8. *Appended Answer, by Yabe, Under-Minister of the Interior.*[2]

"In regard to your letter, an instrument of debt, even though old in date, is to be taken cognizance of and payment ordered, either if it is dated subsequent to the Nullification[3] Order of IX Kwansei, or if [being of a prior date] the claim evidenced by it is in fact a deposited fund, bearing no interest; but it is not to be taken up and ordered paid, either if there is sufficient evidence that it was executed (though bearing no date) before that Order, or if the parties disagree about the two dates [unless it was given for a deposited fund]. Such has been the practice. But in such a case as the above, where the creditors have been negligent in demanding payment, further inquiry is necessary before we can give final answer.

1. But this order (see No. 13, *ante*) threw out of court only those claims which were contracted before the 9th month, 1st day, of that year. The suggestion may be that the documents were intentionally post-dated. 2. Probably Finance Magistrate. 3. *Kiken* (lit. abandonment). This term is now used to signify the "release" of English law.

4. *Letter from the above Yabe, Under-Minister of the Interior, to Toyama, Warden of the Palace Gate, Town Magistrate of the North.*

"Enclosed is a copy of my answer to the retainer of Matsudaira, Governor of the Capital, by whom I have been consulted about an action on a money loan now pending before you. I beg to ask whether you have any objection to make to it?"

[No. 28] *Disposition of Actions on Money Loans.*

A Proposal laid before the Council of State by Torii, Lord of Kai, Town Magistrate.

Dated Tempo, XIII, 10, 1 (November 3, 1842).[1]

1. *Proposal.*

"The failure of debtors to repay their borrowings has recently become so frequent that creditors have been obliged to resort to usury to recoup their losses, and in consequence the circulation of money is at present very sluggish. Seeking a remedy for the situation, you have condescended to consult me upon the subject and to ask whether anything can be effected by a revision of the system of procedure in actions on money loans. The result of my deliberation I now lay before you.

[*Rubric*]. As money-lending is intimately connected with the circulation of money in the world, the rules of procedure relating thereto must be adapted to the needs of the time. Thus, when it was found that the money circulation had been injuriously effected by the Nullification Order of Kyoho, I (1716), an Order[2] was issued in Kyoho, XIV (1729), by which all actions on money loans, etc., contracted

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1. Cited from *Tempo Kaikaku Yo-atsukai* ("General Reform of Practice in Tempo"). 2. See No. 1, *ante*.

No. 28. after the 1st month of that year were to be taken cognizance of. Another change, however, was made by the Order of Yenkyo, III, 3 (1746), by which[1] all claims based on money loans, etc., contracted before Yenkyo, I (1744), were to be settled out of court,[2] while in actions on claims contracted from and after that year the defendant was to be summoned to the Chamber of Decisions on the 4th or 21st of the month and ordered to pay, and on default an instalment order was to issue, and if the default continued, he was to be put in bankruptcy. Since that time the system of execution in bankruptcy in the Town Magistrate's Court has been conducted on those lines. But the effect of that system was almost destroyed by the Resolution of the Chamber of Decisions in Bunkwa, III, 5 (July, 1806), by which[3] it was determined, after a report to the Council of State, to make a change in the established amounts of the instalment-schedule by reducing the yearly amounts payable. The chief consequence of this order has been that the instalment-amounts, already small, became still smaller, and it was not merely not worth while, but was even prejudicial to the creditor to bring an action for his claim; and the tendency has been to force him invariably into a private settlement, and for him to receive a part, say one-third, of the amount in ready money, and as to the rest, either to get the debtor to re-write the claim, or to release[4] it entirely.[5]

Furthermore, men of late have become more and more self-willed and shameless, insomuch that when they borrow money, they imagine that they can delay payment indefinitely by making some excuse or other; while the creditors, on the other hand, to make good the loss arising from the devices of the debtors, naturally have recourse to usury, and

1. See No. 5, *ante*. 2. *Aitai-zumi*. 3. See No. 99, *infra*. The Nullification Order of Kwansei, IX (1797), is not mentioned. See No. 13, *ante*. 4. *Kamben* (pardon, release). 5. Here the rubric ends.

have thus brought down upon themselves your recent order for the reduction of the rates of interest. In seeking to cure these evils and that of the inactive circulation of money, the best measure, in my opinion, would be to disregard all minor considerations and thoroughly reform the laws on this subject, so as to facilitate legal proceedings as much as possible and give the creditor a guarantee that he shall obtain satisfaction without fail, if suit be brought, thus relieving him from fear and disposing him to lend money at ordinary rates. I therefore enclose a document setting forth the details of the reforms which seem to me desirable. Prejudiced as it may be, I beg your consideration of it. If it meet your views, I shall make a further report as to the form of the Proclamation to the townspeople on the subject of the enclosure.

10th month.

Torii, Lord of Kai."

2. *Proposed Law Amending the method of disposing of Actions on Money Loans.*

Dated Tempo, XIII, 10 (November, 1842).

"*Art.* 1. (1) [Ordinary] money loans;[1]
(2) Prayer-fund loans;
(3) Patent-fund loans;
(4) Loans on hypothecs;
(5) Advances on behalf of another;
(6) Loans for taxes due in advance;
(7) Wages for labor;
(8) Earnest-money;
(9) Dowry-money;
(10) Unpaid purchase-money;
(11) Investment-loans;
(12) Loans to Government vassals or Government merchants secured by hypothec of ground-rent or house-rent of residence-land received from the Government;

1. For the vernacular terms, see No. 5, *ante*.

No. 28] For these claims the rule shall be as follows. An order for payment within 30 days shall first be made; if at the end of that time payment is not made, an order shall issue for payment by instalments, twice a month; if default continues, an order of execution in bankruptcy shall issue. If a debtor fails to appear on summons, or is in [wilful] default after being ordered to pay, he shall, if one of the military gentry, be reported to the Council of State, or if of the priesthood, farmers, or townspeople, be punished. [Such has been the law heretofore in force]. Henceforth this regulation is repealed as to farmers and townspeople. When an action of the above sort is brought against such a person, the parties shall be ordered to appear without delay and confront each other, with oral pleadings; and if their statements correspond,[1] and there is no irregularity on the face of the instrument of debt, the Court shall issue an order for payment within a term double that in case of a house-pledge loan; if there is a default at the end of that period, the debtor shall be ordered to confinement in the hand-stocks,[2] whence he shall be released on payment of the claim; if the default continues, an order of execution in bankruptcy shall issue. If the parties are at issue upon the facts, the Court shall try the issue, and then, if necessary, proceed as above.

If at the end of the term above mentioned the debtor sends a representative, alleging illness in excuse for non-payment, then an inquiry shall be made as to the truth of this, provided the defendant is a resident of Yedo, by the local official of his district or by an officer of the Court, and if the fact is as alleged, an order to be confined at home,[3] [but not to be put into stocks,] shall be made. If the debtor resides in a distant province, whence he has been summoned,

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1. That is, if the defendant does not deny the facts alleged. 2. *Te-jo-azuke.* The defendant was committed to the house of a relative or friend for safe-keeping. 3. *Oshikome.*

the local official shall make inquiries, and if they are satisfactory, the Court shall grant the representative's request to take the defendant's place and shall treat him as the defendant in the case; if however, there arises any doubt as to the truth of the excuse, the Court shall instruct the feudal lord or the esquire or the deputy to make the necessary inquiries.

Appended Note.[1] Fixing the term of payment at double that used for suits on house-pledge loans, as stated in the text, is quite proper. But to issue an order of execution in bankruptcy in so short a time seems too severe, at least where the defendant is a farmer. In that case, then, let the rule be that if the debtor pays the greater part of the debt, the term shall begin *de novo;* provided, of course, that if after this a default occurs, execution in bankruptcy shall be ordered as stated in the text.

Art. 2. The term of the hand-stocks confinement and the home-confinement shall be about 80 days; if at the end of this time payment is not made, execution shall be ordered as above.

Art. 3. If it appears that the debtor has secreted his property, or committed any other illegal act, [he and] the local officials shall on proof of this be suitably punished.

Art. 4. If the defendant is in fact a dependent[2] in the house of another, he will have no property to be taken on execution; but if, though nominally a dependent, he really has property of his own, or carries on a fair business, he must deliver up his clothes, utensils, [and other movables].

Art. 5. The same rule shall be applied where the defendant is a domestic servant; and the Court may, if desirable, order his surety[3] to undertake and pay the claim.

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1. By the Council of State. 2. *Dokyo.* 3. Every servant was required to have a surety. See the enactments in Rudorff's *Tokugawa Gesetzsammlung*, pp. 61–64.

No. 28] *Art.* 6. If any of the cultivated or residence land of a debtor against whom an order of execution has issued is subject to a pledge, the Court, if upon examination of the instrument it appears that the pledge was made before the action was commenced, shall order the pledged property to be sold, the proceeds being paid to the pledgee to the amount of his claim, and the surplus to the plaintiff; if there be no surplus, the Court shall sanction whatever arrangement may be reached between the pledgee [and the plaintiff in regard to the latter's receiving a share in the proceeds]. But an instrument purporting to be one of pledge, yet bearing no counterseal of the local officials, shall be treated merely as an ordinary instrument of loan. Even though no pledge exists, the land shall be delivered over to the plaintiff not directly, but in the form of money, the land being sold and the proceeds applied to the debt.

Art. 7. Money, residence land, and cultivated land brought by the wife [of a bankrupt] in dower shall likewise be applied as above described to the payment of the debts; unless it stands in the name of the wife and is clearly proved to have been brought in dower, in which case it shall be exempt.

Art. 8. Where an action is brought against one who has been subjected to execution in bankruptcy and has delivered up all his property and is living as a dependent in the house of another, the Court, if on investigation it appears that he is carrying on a fair business, shall proceed against him as described above in the case or dependents, and, if it is satisfied that he is in fact a dependent, shall dismiss the action, ordering suit to be brought when he has again acquired means.

Art. 9. Actions upon claims existing before the [Nullification] Order of Kwansei, IX (1797),[1] shall be taken up and adjudicated, if the defendant admits the fact

1. See No. 13, *ante*.

of the borrowing, no matter how many years have elapsed between the conclusion of the contract and the bringing or suit. But sometimes this interval is so long that the accumulated interest has come to exceed the principal, and sometimes one who is dunned for a liability of a parent or other ancestor is forced, in order to avoid a suit, to acknowledge the claim and renew the liability in his own name by an instrument of loan or of deposit;[1] in these cases, after investigation, the Court, if it is the case of the interest exceeding the principal, shall order the interest to be reduced to the amount of the principal, or, if it is the case of an ancestral debt or of a claim which has been outstanding for 10 years or more, so that compound interest has been reckoned and the debtor has renewed the entire amount in a new instrument of loan or deposit, shall order a private-settlement,[2] without giving judgment.

Art. 10. Actions upon credit sales are difficult to adjudicate when brought many years after the claim arises, because the parties make endless contradictions in regard to their accounts; henceforth the period of limitation for such actions shall be 10 years. Actions brought later than that shall not be taken up, and private composition[3] shall be ordered.

Art. 11. Nevertheless an action on a credit sale made more than 10 years previously shall be taken up and an order of payment issued, if the parties have continued their transactions down to within 10 years and a part of the money has already been paid.[4]

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1. The renewal by an instrument acknowledging a deposit of money was a favorite transaction, because the creditor obtained a better remedy. See Part III, Section III. 2. *Aitaizumi.* 3. *Naisai.* 4. The meaning is not clear; but at any rate it seems that something more must have happened in the 10 years than a mere part-payment.

No. 28] city of Yedo or the defendant lives within 5 *ri* thereof, and the complaint-indorsement[1] orders appearance on the 7th day, the minimum sum for which suit may be brought shall be 1 *bu* in gold, or 15 *momme* in silver, as above stated; while in actions in which the defendant lives more than 5 *ri* distant from the city, the minimum sum shall be 1 *ryo* in gold, or 60 *momme* in silver (the present rate of exchange), or 6,500 *mon* of small money.

Art. 16. In actions on money loans bearing the seal of the rural district,[2] the practice has been that, although in suits against the farmers of a village it appears that the debt was really a debt of the feudal lord or the esquire, yet this fact cannot be taken cognizance of, if there is on the instrument no official seal or indorsing-seal of the feudal lord or the esquire;[3] unless the assertion of the farmers as to the real purpose of the loan is corroborated by the feudal lord or the esquire and a promise of payment is made by him, in which case payment shall be ordered accordingly. But where there is an official seal or indorsing-seal of the feudal lord or the esquire or a retainer, or where there is a collateral instrument by such a person, the feudal lord or the esquire shall be ordered to pay, although no petition has been made to that effect. The decision[4] of the Chamber of Decisions in Kwansei, II, 2 (March, 1790), has hitherto been observed as the law. Yet in such cases the persons whom the creditors specially look to are not the feudal lords or the esquires, but the farmers themselves; and the purposes of the credi-

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1. *Meyasu-uraban.* The Court indorsed the complaint, ordering an appearance, and the plaintiff served it on the defendant. 2. *Go.* See No. 7, *ante.* 3. One or more villages often pledged the rice-product as security on payment of advances made to their lord. The lord instigated or compelled this, and expected to pay the debt from the rice-tax. But apparently the transaction was such as to place the villagers in the position of borrowers, in name at least. 4. No. 7, *ante.*

tors would be defeated[1] if the feudal lord or the esquire were made solely responsible and a payment by instalments ordered. Henceforth, then, where an instrument of debt made by farmers with the seal of a rural district fails to contain the official seal or indorsing-seal of the feudal lord or the esquire or a retainer, and there is no collateral instrument, the debt shall not be recognized as that of the feudal lord or the esquire, even though the farmers request this; and if after an order for payment within a certain term the claim is still in arrear, the Court shall order the counter-sealing village officers to be put in stocks; if the default continues, the villagers shall be ordered to contribute towards its payment; or if the debt was incurred by action of the officers only, and the people knew nothing of it, an order of execution in bankruptcy shall be made against the officers, if they do not pay. But where the instrument contains the official seal or indorsing-seal of the feudal lord or the esquire, or where there is a collateral instrument, he shall be ordered to take up and pay the debt, if petition is made[2] to that effect.

Appended Note. Although, as you say above, there may be cases in which the only persons acquainted with the transaction are the village officers, and the farmers themselves are without knowledge of it, and in such cases it would seem quite proper to order execution in bankruptcy for the village officers, yet a strict enforcement of this rule would result in utter ruin for the officers and their families or in their removal to some distant village, and the public business of the village would be completely at a standstill, so that great caution must be exercised in pushing the rule to this

1. Because the only real security the lender had was the pledge of the rice-product. 2. Whether by the plaintiff only or by the village does not appear.

No. 28] extreme. This is especially so since an equal debtor, if not the sole real debtor, in such cases, is usually the feudal lord or the esquire, even though the instrument does not bear his official seal or indorsing seal; so that the best method seems to be to order the villagers to contribute to the payment of the claim.[1] This rule however, need not be strictly carried out, wherever after mature deliberation the circumstances seem to make it desirable not to do so. Where, however, there exists a seal of the feudal lord or esquire, as above stated, the rule should be as stated in the text.

Art. 17. Pledges of reliable property.[2]

The rule has been for this class of claims that they shall be treated analogously to house-pledges, and payment shall be ordered within a term of days proportional to the amount borrowed; that an instrument purporting to evidence a sale of house or storehouse [but in reality given by way of security] shall be treated as a hypothec-instrument,[3] unless it bears the counterseal of ward officers, relatives, and [ward] general-representatives,[4] in which case it shall be treated as a house-pledge; that even a loan made on deposit of title-deed with the lender shall be treated as an ordinary loan, if the instrument bears no counterseal of the ward officers. Decisions shall be hereafter rendered, as formerly, according to these rules.

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1. The idea seems to be that, while the lord cannot be held liable, yet the debt is no more that of the village officers than of the people, and that they should therefore not be obliged to bear alone the brunt of their suretyship. Yet the officers alone had taken part in the transaction, and this seems very good ground for the distinction criticized by the annotator. 2. *Tashika naru shichi-motsu.* The force of the *tashika naru* is not quite clear. The *motsu* probably indicates houses, valuables and things other than land. 3. Hypothecs were on the footing of ordinary loans. See *supra, passim.* 4. *Sodai;* this seems to imply that the *sodai* were not reckoned as among the *machi-yakunin.*

Art. 18. Bills of exchange. The rule in regard to suits for money due on bills of exchange is that they shall be treated on the footing of actions on house-pledges, and shall be ordered for payment within similar periods, unless the amount bears interest, when they shall be treated on the footing of ordinary loans. This rule shall remain in force for the future.

Art. 19. (1) Building-loans;[1]
(2) Money advanced;[2]
(3) Sundry-expense money.[3]

These three classes of claims shall be treated, as heretofore, on the footing of ordinary loans.

Appended Note. In claims for sundry-expense money, [the defendant] is under an obligation to pay the expenses incurred [by the plaintiff], for which the defendant ought to have forwarded [the money]. Now such advances are of course made without agreement for interest, and it has long been customary to treat it as a principal action, analogously to the house-pledge, although under exceptional circumstances it may be treated as a money action, analogously to ordinary money loans. This was the decision of the Chamber of Decisions some years ago, and the same rule shall obtain hence-forth.

Art. 20. (1) Money granted:[4]

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1. *Fushin-kin;* money lent to another for building expenses. 2. *Shiokuri-kin;* usually, money sent in remittances from time to time, generally by way of gift; but the term seems to be applied usually, as a euphemism, to the advances of money-lenders to gentry, on security of tax-rice. See No. 57, *infra.* 3. *Zatsu-yo-kin;* apparently money due from A on account of expenses incurred by B on A's behalf; answering roughly perhaps to the English "money paid to the defendant's use," or to the French "*gestion d'affaires,*" and perhaps including the expenses of an agent. 4. *Yuzuri-kin;* probably a sum promised by way of *yuzuri* or grant, e.g. a transaction resting nominally at least on family affection or some other reason than commercial gain.

No. 28. (2) Money deposited;

(3) Exchange-money;[1]

(4) Character-security money:[2]

There had been no precedent as regards money deposited; but it was decided by the Chamber of Decisions, in the year of the Cock, 2d month (March, 1837), on the proposition of Naito, Captain of the Imperial Body-Guards, at that time Finance Magistrate, that it should be treated analogously to the house-pledge, because it cannot be (as an ordinary money loan is) applied to the depositary's own use.[3] Henceforth, then, the procedure shall be the same for money granted and the other sorts named above; provided that if the sum is to bear interest [by agreement of the parties], it shall be treated in analogy to ordinary money loans.

Art. 21. Hire for chattel-leases.[4] This occurs where a man is unwilling to lend his money in the ordinary way, not being certain of payment, and so makes a lease-for-hire[5] of clothes or other things to the debtor, in order that the

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1. *Ryo-gaye-kin;* money to be given in exchange for a sum of a different denomination or metal. 2. *Mimoto-shoko-kin;* money deposited with a master or landlord or guild-master as security for behavior or for performance of the obligations of a position. 3. That is, there is no reason why he should not be ready to restore it at any moment; while in ordinary loans the money had been used and it would be difficult to collect immediately enough cash to discharge the claim. But there seems to be also the feeling that an ordinary lender on interest is receiving a profit from the transaction and hence ought not to press the debtor too hard, while the transaction of deposit is entirely gratuitous and the depositor's position is not so tainted with desire for mere gain as to prevent him from insisting on a strict performance of the obligation. 4. *Son-ryo kinsen.* 5. *Son-ryo* (price, hire)-*kashi* (loan). The legislation on the subject is given in full *infra*, No. 70, *et seq.* It is difficult to see where the security to the lender of the clothes comes in, for probably the pledgee would hold them as against him. In fact the lender would seem to have had no security at all, but merely to have reaped a high profit on the loan.

latter may pledge the goods and get money to meet his necessities. In such cases the hirer, if he pledges the goods, has a double charge to pay, viz., the hire of the goods and the interest on the pledge-loan; and to prevent this evil, it was ordered, in a Town-Proclamation[1] of Bunkwa, II, 2nd month (March, 1805) that such leases might be made where the purpose was in fact to meet a pressing pecuniary necessity, but that the term stipulated in the instrument must not exceed 3 days. Henceforth, therefore, no action on such a lease shall be taken up if the instrument is not in accordance with the above rule, and the sum to be recovered as hire shall be limited to 3 days' amount, even though a longer term has been agreed on between the parties; and if the borrower [where the term exceeds the legal limit] has pledged the goods hired, he shall be ordered to return them. But the above rule as to a 3-days' limit does not apply to leases between friends or by one not making a business of such leases.

Art. 22. Yearly-instalment money.[2] In actions for yearly instalment-money it had been customary for the Court to pay no attention to the provisions of the instalment-instrument expressly declaring the sum to be payable in yearly instalments, but to order payment according to the original instrument of debt. But, in view of the fact that the arrangement by which the payment by instalments is to be made is not arbitrarily settled by the debtor himself, but is made with the consent of the creditor, the Chamber of Decisions decided in Horeki, IX, 5 (June, 1759)[3] that instalment-agreements should be carried out according to the intention of the parties, [and payment could not be enforced] of instalments not yet due; but otherwise as to arrears of

1. *Machi-fare.* 2. *Nempu-kin.* 3. Cited in the Section on "Instalment Payments," *infra.*

No. 28. instalments.[1] This decision was approved by the Council of State, and henceforth such shall be the rule.

Art. 23. Action for pleasure-money.[2] In order to prevent the running up of credit accounts of this sort, which tend to produce numerous spendthrifts, henceforth no action shall be taken up for the recovery of arrears due for the hire of theatre-boxes in the theatres of the Theatre-block nor ot prostitute-hire in the prostitute-quarter.

Art. 24. Precedent, Subsequent, and Concurrenf Actions.[3] If in an action on a money loan an order for payment has been made, fixing a preliminary term, and the debtor is then ordered to be committed to a friend for safe-keeping,[4] with or without hand-stocks, or to be imprisoned, as a step in the trial of some criminal charge pending against him, the proceedings in the precedent action shall be suspended until the conclusion of the subsequent action, when final judgment shall be rendered.

Art. 25. If an order of payment fixing a preliminary term has been made in one action, and a subsequent action of a similar sort[5] is brought, convenience requires that the second complaint should temporarily be rejected, with an

1. The meaning is this. When a debtor was in arrears with a large sum of money, a new instrument was often made out, acknowledging the debt and arranging for a payment by instalments. These instruments the Courts formerly did not recognize. Hereafter they are to be recognized, and the creditor may not sue for the original sum except as it falls due under the new arrangement. Where a given instalment is not yet due, it cannot be precipitated. But if an instalment is not paid when due, it is demandable immediately. The "otherwise" refers to the immediate enforcement, not to any action contrary to the parties' intentions. On the whole subject, compare the later chapter dealing with it. 2. *Age-daikin;* money to given to dancing-girls, actors, courtezans, etc. 3. *Sen-so; go-so; ai-so.* The last was an action brought on the same day as another. It must be understood that these terms refer to actions against the same defendant. 4. *Azuke.* 5. The classes probably in the writer's mind are the principal and the money actions.

order to the plaintiff to bring it forward again after the termination of the precedent action; provided that where the subsequent action is by the government for the recovery of a money claim, the precedent action suspended until an order for payment in the subsequent one shall have been made.

Art. 26. If the defendant in a precedent action has died or absconded and his patrimony is dispersed, or he has become bankrupt and entered a friend's house as a dependent, and then an action is brought against his surety, the latter shall be ordered to pay the debt, just as the debtor himself would have been; but if the debtor has suffered confiscation of estate or any heavier punishment, no order of payment shall be made.[1]

Appended Note. But the better rule would be that if the punishment of the debtor was not connected with any act respecting the claim which is the subject of the action, but was due to some other fault, the surety should not be released from liability.

Art. 27. If after the debtor has delivered up all his property for the payment of his debts a residue remains unpaid, and the surety[2] is sued for this, an order of payment shall be made.

Art. 28. If the subsequent action is on a money loan, while the precedent action is of some other sort, the former shall be taken up and tried, notwithstanding the existence of the precedent action. But if the precedent action is one for land-eviction or shop-eviction and a subsequent action is brought while the other is pending, the procedure should be first, to make an order for eviction against the defendant-tenant, if sufficient ground is shown, and then to summon

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1. This probably represents the rule hitherto observed. 2. That is, each surety would be sued by the proper creditor for the amount of his claim remaining unpaid.

No. 28] for the delay, or, if the defendant be a vassal of low degree, a peremptory order shall be sent to his Chief of Bureau, fellow-official, or family.[1] In all cases, if the occasion requires, the retainer undertaking defence on behalf of his master may be sentenced to imprisonment.[2] Such has been the past practice with reference to military gentry, and in the future it shall continue the same.

Art. 35. Actions on money-loans against a temple, *no*-actor,[3] or Government-merchant.[4]

These actions shall be treated in analogy to those against military gentry, and a repeated failure by the defendant to bring the proper instalment-amount shall be visited with suitable punishment.

Addendum. In Kwansei, III, 8 (September, 1791), my predecessor consulted the Temple Magistrate about the disposition of an action brought against a temple-incumbent on a money loan received by his predecessor, who had been punished for some offence [and forfeited his office]; and the Temple Magistrate, Makino, Lord of Bizen, answered: That the incumbent should be held liable if the predecessor had used the seal of the temple on the instrument; while if he had used his own seal, the proper person to sue was the surety, not the successor; That such has been the practice, and so, if an incumbent borrows money under the seal of the temple, with a recital in the instrument that the money is to be applied to the repairs of the temple, the debt is in fact that of the temple itself, and the proper person to be responsible, after the dismissal of the incumbent, is the successor in office. The above precedent I was fortunate enough to find among our records. But this circumstance rather perplexes me; according to

1. See No. 12, *ante*. 2. The retainer not only appeared for the lord, but also went to prison for him, if necessary. 3. See Chamberlain's "Things Japanese," s. v. "Theatre;" also the same author's "Classical Poetry of the Japanese." 4. See No. 5. *ante*.

the special custom of the Zōjo Temple, of the Jodo sect,[1] all debts incurred by the branch-temples must be reported to the chief temple and sanction be obtained, so that a debt incurred without such report cannot be regarded as a debt of the temple, and the liability cannot be transferred to any subsequent incumbent even though an instrument is given, under seal of the temple, reciting that the money is borrowed for the use of the temple; although a transfer of the liability is allowed where the instrument reads "transferable to the disciples of the debtor," though even in this case not as a temple-debt. This custom of that temple has often been pleaded in defence to actions on money loans, and my predecessors, during and since the period Bunsei (1818-1829), have often consulted the Temple Magistrate on the subject, his reply being always that the person to whom the liability should be transferred in such a case is the debtor's surety or religious associate,[2] and that where the surety has died or retired and there is no associate, the creditor is without redress; so that in such cases it has been customary to induce him to compromise.[3] Notwithstanding this answer of the Temple Magistrate, [it is not a desirable rule, and], now that a general reform is to be made in our methods of treating the various actions, it should be ordered that henceforth all debts incurred by the incumbent of any temple of any sect shall be regarded as those of the temple itself and the liability transferred to the successor in office, provided that the instrument bears the temple-seal.

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1. The large temple in Shiba Park, patronized by Iyeyasu and containing in its enclosure the tombs of several Shoguns. 2. *Ho-rui* (religious-relationship). The term is usually applied to the relationship between an elder priest and those younger ones (usually of an inferior grade of priesthood) who associate themselves with him as his disciples. They form a company bound by this "religious relationship," and, as in the case of master and apprentices among artisans, there are certain pecuniary relations between them, and a possibility of inheritance for the disciples. 3. See No. 59, *infra*, (as well as No. 58) for litigation on this subject.

No. 28. *Appended Note.* Although the various temples may have customs of their own in regard to liability for debts incurred by one who had died or been dismissed from office, yet if such customs be allowed to prevail, the proceedings of Courts would be thrown into confusion. It shall therefore be ordered, as you propose, that thenceforth, if an instrument of debt given by a temple-incumbent recites that the money is to be applied to the repairs or other expenses of the temple and bears the temple-seal, the debt shall be considered as that of the temple, and, notwithstanding the pleading of any special custom, the liability shall be transferred to the successor in office.

Art. 36. Actions on money loans against the Hongwan Temples have been treated, since the decision of the Chamber of Decisions in Bunsei, X, 4 (May, 1827),[1] in analogy to actions against military gentry. But henceforth they are to be treated in the same way as actions against ordinary temples.[2]

Appended Note. In a former year it was decided by the Chamber of Decisions that where a loan is received by a superintendent, deputy, or retainer of a Hongwan Temple, not on his own account, but in the name and on the account of the Temple, and an action is brought against the official, it seems unjust to make a 7-day indorsement of the complaint as in the case of ordinary temples; so that when a money action is brought against a Hongwan Temple, the Court shall first summon the superin-

1. See No. 16, *ante.* But no document is there given which indicates that the Chamber indorsed the agreement. However, both the proposer and the annotators concur in attributing to it the authority of the Chamber. 2. Presumably he means in respect only to the mode of enforcing payment.

tendent, deliver the complaint to him, and order him to make a private settlement, and, on failure to procure a settlement, to forward an answer to the Court. Henceforth the same practice shall continue.

Art. 37. (1) Money loaned on house-pledge;
(2) Wages of domestic servants;
(3) Hiring of pledged-land;[1]
(4) Hikimake;[2]
(5) Permitting an escape;[3]

The existing rules, in regard to those five sorts of action are sufficiently minute and strict, so that no alteration is necessary, and such actions shall be disposed of as before.

Such are the results of my deliberations on the subject. If there has been anything omitted, I shall not fail to investigate further and report thereon.

Year of the Tiger, 10th month (November, 1842.)
Torii, Lord of Kai."

3. *Report of a Consultation respecting the Reform proposed by Torii, Lord of Kai.*

Submitted by the Temple Magistrates, Abe, Lord of Totomi,[4] and the Finance Magistrates.
Dated Tempo, XIII, 12, 5 (January 5, 1843).

"In the 11th month of this year we submitted our opinion in regard to the reform proposed by Torii, Lord of Kai, in regard to the method of treating actions on

1. *Shichi-chi kosaku.* For the nature of this litigation, see Part VI. 2. The meaning is unascertainable. 3. *Tori-nigashi;* perhaps an action for aiding an escape. But the compilers, in a note, state that the term belongs to criminal procedure. 4. The other Town Magistrate.

No. 28] money loans, our opinion being to the effect that we were on the whole opposed to the changes suggested and wished to make no change in the existing law; but you replied to us in your letter that the present laws and usages, so far as they exist, are so imperfect and ineffective that debtors often take advantage of them to evade their obligations, and that consequently there is delay in the conduct of suits and the money-circulation is seriously obstructed; so that in the present state of affairs, what is most needed is to facilitate the settlement of all litigation as speedily as possible and to secure to every creditor the certain satisfaction of his claim; and you instructed us to deliberate once more on the subject. Now, generally speaking, a contract of money loan is made with mutual trust and friendship on the part of creditor and debtor, so that it seems hardly proper to treat strictly according to the rules of law an action brought to enforce such a claim. If we remember this, it is easy to see the propriety of the present mode of treating such actions, which is, first, to order the parties to make a private settlement, then, upon a failure to do so, to order payment by the defendant within a term of days, and on default, to pay it by instalments, and, finally, if even this is not done, to issue an order of execution in bankruptcy, or, if necessary, to inflict some punishment; or in case the debtor is of the priesthood or military gentry, to stop with the order for instrument-payment, since execution cannot be ordered against such a person. On the other hand, the question of the money circulation is of vital importance to all the townspeople, who transact their business solely by the agency of money. We see that, if indeed the whole principal is not lost, there is great loss of time and money in having their claims paid back little by little in instalments, the natural consequence being that they avoid lending money as much as possible. It need hardly be said that from this point of view the system of instalment-payment should be abolished in commercial transactions, so far as the interest of the creditor

is concerned. But let us look at the matter from the debtor's side. He borrows money in order to set himself up in business or to rescue himself from pecuniary difficulties, and he has simply himself to blame if, after applying the money in this way, he cannot pay, and execution in bankruptcy is issued against him. Moreover, though now bankrupt, he has ample opportunity of acquiring means again by future efforts. For these reasons there would be nothing harsh in abolishing the system of instalment orders, and in providing for the issue of execution in bankruptcy without any intermediate steps,—that is, so far as concerns the interest of the townspeople, and even of those villagers who make trade their special occupation. But we cannot apply the same principle to those villagers who follow a trade (as the case is with most) in the hours not devoted to their chief occupation, husbandry. If to such a person we refuse the leniency which the instalment system offers and subject him inexorably to the process of bankruptcy directly upon default at the end of a specified number of days, he is forced inevitably to sell off his plot of land—the patrimony of generations—and then (especially when he has no well-to-do friends to look to for help) either to become a day-laborer, or, worst of all, to abandon his native village and follow the life of a vagabond, without means of support and without shelter for his head. The consequence of such failures is that the [working] families of the villages decrease in number and the extent of land lying idle is increased. If what we have said is correct, it results that the process of execution in bankruptcy [without the intermediation of instalment-payments] is not suitable for enforcing money claims against villagers. But we do not think that any exception should be made for that class of debtors. First, it would result in non-uniformity of practice if we employed different processes in similar actions according as the defendant was a townsman or a villager. Second, the method of instalment-payments, as

No. 28] already stated, tends to obstruct the money-circulation; for by an order of the current year of the Tiger, 9th month (October, 1842),[1] the rate of interest was fixed at 1 *bu* per 25 *ryo* [per month], which has prevented the creditor from charging a high interest to compensate his risk [and therefore the creditor is deprived of the means he has of making up for the uncertainty and tediousness of the instalment-system.] These considerations are in our opinion strong enough to require the entire abolition of the instalment-system. Nor are we without a precedent, for the current practice in the Court of Osaka is to issue execution in bankruptcy after a specified number of days, without ordering the intermediate series of instalment-payments. Acting on the same principle, we may reasonably determine to abolish the system of instalment-payments in money actions, so far as townspeople and farmers are concerned.

The considerations we have mentioned have already been discussed in the Proposal of Torii, Lord of Kai (which, we believe, was based in this respect on the above-mentioned process of the Court of Osaka); but we have none the less ventured to express our opinion on this and other points in the present comments to his Proposal, because the subject is one of the utmost importance. We trust that if you establish a new law on the subject you will adopt the conclusion above stated [as to the abolition of instalment-payments]; in that case creditors would henceforth have nothing to fear in regard to the recovery of their money, and debtors would not unreasonably delay payment, since on default after a specified number of days the debtor would immediately be subjected to execution in bankruptcy and be obliged to deliver over his property; and as a consequence the money circulation would became active. If this proposition of ours meets your views, we shall investigate the subject further and shall attempt to prepare the draft of an order.

1. See *infra*, in the Section on "Interest." The order was dated Tempo, XIII, 9, 29.

The above document contains the results of our deliberations at our second meeting. We return your letter and the other two documents which you sent to us.

Year of the Hare, 4th month (May, 1843).

4. *Decision by the Council of State.*

"Year of the Hare, (June 22, 1843)
5th month, 25th day.
Handed down by the Lord of Echizen.[1]

Memorandum.

Your draft in relation to the reform of proceedings in money actions shall be accepted as it is, with those changes only which we have noted upon it, and we have instructed the Temple Magistrate to notify the proclamation-officers[2] that hereafter all money actions against temples are to be tried, not, [as heretofore], according to their special customs, but in the same manner as actions against other defendants."

5. *Appended Note, by Torii, Lord of Kai.*

"I respectfully acknowledge the receipt of your instruction that my draft, relating to the reform of proceedings in money actions and forwarded recently to you, is to be accepted as it is, with those changes only which you have noted upon it. I acknowledge also the receipt of your instruction to the Temple Magistrate to notify the proclama-

1. Mizuno, Lord of Echizen, the Councillor of State presiding during the current month. He was one of the best known Councillors of the century. 2. *Fure-gashira.* These seem to have been the subordinate judicial administrative officers under the Temple Magistrate. Disputes between persons under his exclusive jurisdiction were first brought before them. Each temple is said to have had a *fure-gashira*, and there were others who dealt with certain classes of persons,—fortune-tellers, outcasts, etc.

No. 28. tion-officers that hereafter all money actions against temples are to be tried, not [as heretofore] according to their special customs, but in the same manner as actions against other defendants.

5th month, 25th day (June 22, 1843).

Torii, Lord of Kai."

5. *Resolution of the Chamber of Decisions as to the method of disposing of Actions before it after the Reform in the proceedings in Money Actions.*

"Tempo, XIV, Hare.

We, the members of the Chamber of Decisions, have passed the followed Resolution in regard to the method of disposing of money actions, in conformity with the reforms of practice lately made and promulgated.

(1) If after both parties have appeared on the appointed day[1] and suit has been joined,[2] their allegations[3] do not raise an issue[4] [as to the existence of the claim], the [Court][5] shall inspect their written pleadings,[6] and then dismiss the parties temporarily, afterwards summoning them before the Chamber of Decisions on a vacant one[7] of the

1. *Sashi-bi*, the 7th day often spoken of as appointed by the indorsement of the judge. 2. *Kuji* (action)-*awase* (join, confront); the parties probably appeared together and were confronted. 3. *Moshi-kuchi*; this signifies their statements *qua* assertions. 4. Lit., meet in one point. 5. The process apparently was for the parties to have their respective allegations written down (*kuchi-gaki*) by a clerk of the Complaint Bureau (this may be the meaning of *kuchi-gaki-tori*, p. 107, *infra*: for it is unlikely that the parties would venture to write their pleadings themselves); they then appeared and were confronted, the debtor admitting the existence of the claim, and the Court (apparently the Magistrate with whom the action had been entered), after examining the pleadings, appointed a day for judgment. 6. *Kuchi-gaki*. 7. *Cho-gwai* (outside the book). Book-days were apparently the fixed days (4th and 21st) already mentioned (No. 5, *ante*); these would probably be used for trials of disputed issues; and the judgments in undisputed cases would be appointed for some one of the vacant days set apart for money actions.

money-action days,[1] and shall [then] make an order for the payment of the claim within a term double that in case of a house-pledge action, the length of the term being proportioned to the amount of the claim.

Addendum. Form of the written pleadings. The defendant shall concisely make in writing[2] the following statements as his written pleading: The circumstances under which the debt was incurred; the amount already paid; the wording of the instrument of debt; and the undertaking to submit to whatever order of payment may be made. The plaintiff shall, as his written pleading, state on the same document, next to the defendant's pleading,[3] that he has no objection to make to the statements of the defendant, and that he hopes for judgment accordingly. If the written pleadings are in the above form and there is no irregularity in it, the proceedings above described shall be taken as of course, without any consultation[4] or any oral report.[5]

(2) Term of payment. 'If the unpaid arrears are less than 100 *ryo*, the term shall be double the term settled by the regulations for the equivalent amount in a house-pledge action; but if it is over 100 *ryo*, the term shall be settled by the Court.' This being the provision of law, we hereby accordingly fix the following schedule:

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1. *Kane-kuji-bi.* 2. This does not in the original necessarily imply that the defendant wrote the statement; he may have made the oral statements, while the clerk reduced it to writing. But it is certainly open to doubt whether the clerk did the writing. 3. The plaintiff had already filed his *meyasu* or complaint; hence the next in order would be the defendant's *kuchi-gaki*, and then the plaintiff's response. 4. Presumably referring to the act of laying the case before the other judges for general deliberation. 5. *Yenzetsu*, the general term for a spoken address. Here the distinction between a written reference and a mere oral reference seems to be intended. *Sho* (letter) usually occurs in the term for "consultation."

No. 28.

Amount.	*Term.*
100–200 *ryo*	400 days.
200–300 "	500 "
600–1000 "	650 "

If the amount exceeds 1000 *ryo*, the term shall be about 2 years, or double that fixed by the order [relating to house-pledge actions], which is 12 months, an intercalary month being reckoned as one month. In extraordinary amounts the term shall be determined by the Chamber on deliberation in each particular case.

(3) If, after judgment rendered as above, [ordering a term for payment], the parties [appear at the Magistrate's office and] declare that payment has been made, they shall be sent to the Chamber of Decisions, where an entry of payment shall be made.[1] Where the debtor, by paying the greater part of the claim at the expiration of the term, entitles himself to a supplementary term,[2] or where the debtor, in case of a failure to pay, is sentenced to hand-stocks, the Magistrate before whom the action is brought shall proceed without oral report [to the other members of the Chamber]. But if execution in bankruptcy is to be ordered, he shall send the defendant [to the Chamber of Decisions], appointing a vacant one of the money-action days, and the order shall issue accordingly after an oral report [by the Magistrate to the other members].

(4) The form of the submission-document[3] for an order fixing the term of payment[4] shall be as heretofore. But now that the system of instalment-payments has been abolished as regards farmers and townspeople, there is no

1. Probably by a clerk. 2. See No. 28, 2, Art. 1, *ante*. 3. *Ukeshomon*, the acknowledgment and acceptance signed by all parties upon judgment rendered. See the cases *passim* for examples. 4. *Nichigen sumikata*.

reason why in such cases the term-payment order[1] should be delivered to the plaintiff as heretofore; so that those already so given should be taken back.

(5) An order for execution in bankruptcy shall contain the following statements: That the Court has ordered the defendant to discharge the claim within a certain term, but the defendant declares his inability to do so; That this is against law and therefore the Court orders execution in bankruptcy; and, That the defendant, under supervision of his local officials, is to sell his ricefield and upland, residence-land, house, storehouse, family belongings,[2] etc., and deliver the proceeds [to the plaintiff]. This order shall be addressed to the defendant and the local officials. The following order shall be issued to the plaintiff: That the Court has made an order as above to the defendant; That the plaintiff shall therefore personally examine the defendant's rice-field and upland, residence-land, house, storehouse, family belongings, and, after they have been sold, shall receive the proceeds. A submission-document shall be taken from the parties, signing jointly, in acknowledgment of these orders. Moreover, as it seems improper that the deputy, feudal lord, or esquire in whose district the defendant is, should be without knowledge of the bankruptcy, the Court shall summon beforehand[3] an attendant[4] or clerk[5] of the deputy or a retainer of the feudal lord or the esquire, as the case may be, and notify him of the order.[6]

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1. *Nichigen shomon;* another name for the *uke-shomon* used in instalment-judgments. Apparently this document would be the basis of subsequent suits for delayed instalments, much as a judgment is sued on with us. Hence, upon the abolition of the instalment system, no suits of this sort would be necessary, but an application for execution. 2. *Tahata, yashiki, iye, kura, kazai.* The last term probably applied specially to the personalty. 3. That is, in time for him to be present at the judgment. 4. *Tetsuki.* 5. *Tedai.* 6. In cases *passim* will be found a recital that this has been done.

No. 28] Note, that the submission-document shall contain a detailed statement of the course to be pursued in case the proceeds of the sale exceed or fall short of the plaintiff's claim.

(6) Actions for unpaid purchase-money due for 10 years or more, and actions on an instrument of money loan, renewing an old loan and making interest and original principal the principal of a new loan or deposit,[1] cannot, according to the new law, be taken cognizance of in any Magistrate's Court. In accordance with this rule no action for unpaid purchase-money due before the year of the Serpent (1833 [2]) or on instruments of loan renewed as above are to be taken up; actions of the sort now pending are, after investigation, to be dismissed, and after an oral report [by the Magistrate to the members] an order for private settlement shall be made, stating, moreover, that no certificate of discharge[3] need be filed [by the parties with the Court]. The above rule shall apply wherever one complaint contains several causes of action, of which some only are of the above nature.[4]

Note, that cases forward by preliminary-seal [of a single Magistrate],[5] if the action is for unpaid purchase-money overdue for 10 years or on a loan-instrument improperly renewed as above, (the fact to be ascertained by inquiring of the plaintiff) shall also be subject to the above rule. Moreover all [pending] complaints [in such actions], except complaints for more than one cause of action,[6] shall be taken possession of and the indorsements cancelled.[7]

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1. See No. 28, 2, Arts. 9, 10, *ante*. 2. Tempo III, ten years before. 3. *Sumikuchi shomon*. 4. That is, the individual causes of action of this sort shall be rejected. 5. *Shohan*. See No. 13, *ante*. The passage makes special mention of these cases because the main section referred only to cases before a single Magistrate. 6. *Mawari* (going around, circulate)-*meyasu*. The above seems the most plausible rendering. 7. The proceeding where a case was finally settled.

Furthermore, if in any case a determination of the fact on which, as above, its validity depends cannot be reached merely upon the plaintiff's assertions, a joint-pleading[1] shall be ordered for the purpose.

(7) If in any action judgment has been given and instalment-payments ordered, and the instalment-terms have begun to run, no order of execution in bankruptcy is to be made and the case shall be disposed of according to the old practice.

Note, that even though the action be for unpaid purchase-money overdue for 10 years or for a loan improperly renewed, yet, if an instalment-order has been made, the judgment shall continue to be enforced, as just stated.

Actions tried in Private Session[2] before a single Magistrate and actions summarily disposed of [by a single Magistrate][3] shall be subject to the above [rule].

(8). Actions against military gentry. If after service of the complaint no private settlement takes place and notice of this has been given [to the Court], both parties shall, as heretofore, be summoned before the Chamber of Decisions, and after an examination of their pleadings, shall be ordered to make a private settlement; if that is not done within 60 days, then judgment shall be given. But if there appears no probability of a private settlement, the 60 days' delay may be foregone, and, for example, the joining of suit[4] may occur on the 4th day of a given month and the judgment be rendered on the 21st of the same month,—this proceeding being in accordance with the Resolution of the Chamber in Bunkwa, III (1806).[5]

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1. *Taiketsu.* 2. *Uchi-yoriai;* on this day probably the chief clerks were present in consultation with the Magistrate. 3. *Te* (hand)-*kagiri* (all, finish). Here again we must guess; but the two terms seem to complement other each; the Magistrate doubtless settled the majority of the cases without leaving his seat, or else the clerks disposed of the case. 4. *Kuji-awase.* 5. No. 102, 4, *post.*

No. 28] Note, that the rate of interest shall be the same as that already settled in the year of the Tiger when the Proposal was made.[1] But in these cases where payment has already been ordered at the old rate, no change shall be made.

Decided as above."

"*Appended Note.* Where rice-field or upland, residence land, house, or storehouse is in pledge, I think that we had better order the pledgor to settle the matter, so far as concerns that article, with the pledgee, and that the pledgee should be directed to do so.

The Lord of Totomi."[2]

7. *Proceedings in the two Town-Magistrates' Courts in regard to Money-Loan Actions before them.*

a. "Tempo XIV, Hare, 6, 5 (July, 2, 1843).

To the Lord of Totomi,[3]

from Torii, Lord of Kai.[3]

The men of my Department[4] consulted the men of your Department in regard to certain methods of proceeding in the two Courts in money-loan actions, and your men returned an answer to ours, which has been shown to me. I therefore enclose herewith seven documents,[5] embodying

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1. 1843: the current year. See *infra*, in the chapter on "Interest." 2. This Note seems to have no force as a part of the Resolution, and possibly is misplaced. A subsequent case deals with its subject and shows that his rule did not obtain. 3. Both of these were Town Magistrates, but which was in the North and which in the South cannot be learned. 4. *Kumi.* One of the two Magistrates' Offices. 5. These important documents do not appear, and have probably been lost. It would be natural to suppose that the next document but two (7, *d*) is one of them; but there is nothing to indicate clearly what the source or place of that document is. It would seem that there was a Trial Bureau in each Magistrate's Court as well as in the Chamber.

the answer of your men, and beg the favor of your opinion thereon.

Year of the Hare, 6th month."

b. Answer to the above, by the Lord of Totomi.

"I acknowledge the receipt of your letter and beg to say that I have examined and approve of the documents you send. In regard, furthermore, to the inquiry recently made by [your] Trial Bureau to their colleagues [of my Trial Bureau] in regard to second trials of money actions and the payment of interest on investment advances in purchases of timber and fresh fish,[1] I shall instruct them to proceed as stated in the letter. As to when the late reforms are to go into effect I shall expect to have further notice from you.[2] The documents you enclose being copies only, we have not returned them.

Year of the Hare, 6th month."

c. Reply from the Trial Bureau of the Lord of Kai.

"To Tojo Hachidayu,
Nakajima Kayemon,
from Hara Tsuruyemon,
Ando Gengozayemon.[3]

We have examined your letter and beg to say in regard to your inquiry, that we shall inform you to-morrow as to the date of the late reform going into affect. At present proceedings are being governed by the old law.

6th month."

d. [*Inquiry by the Trial Bureau*[4]]

(1) "Art. 9 of your[5] Proposal:[6] Actions upon claims

1. See *infra*, No. 28, 9. 2. Apparently the Court addressed was the one having the presiding authority in this month. 3. The first two are in the Court of the Lord of Totomi. 4. It is impossible to tell certainly the source of this. 5. This would indicate that the addressee is in the Court of the Lord of Kai. 6. See *ante*, No. 28, 2.

No. 28. existing before the Nullification order of Kwanseī IX (1797) shall be taken up and adjudicated if the defendant admits the fact of the borrowing, no matter how many years have elapsed between the conclusion of the contract and the bringing of suit. But sometimes this interval is so long that the accumulated interest has come to exceed the principal, and sometimes one who is dunned for a liability of a parent or other ancestor is forced, in order to avoid a suit, to acknowledge the claim and renew the liability in his own name by an instrument of loan of deposit; in these cases, after investigation, the Court, if it is a case of the interest on an old debt exceeding the principal, shall order the interest to be reduced to the amount of the principal, or, if it is the case of an ancestral debt or of a claim outstanding for 10 years or more, so that compound interest has been reckoned and the debtor has renewed the entire amount in a new instrument of loan or deposit, shall order a private settlement without giving judgment.'

Rubric. Now the foregoing article is occupied with two subjects, claims in which the interest exceeds in amount the principal, and claims in which the instrument has been renewed by an instrument of loan or deposit. Yet this distinction does not appear to be consistent with the following Resolution of the Chamber of Decisions:[1]

'Resolution of the Chamber of Decisions, Art. 6: Actions for unpaid purchase-money due for 10 years or more, and actions on an instrument of money loan renewing an old loan and making interest and original principal of a new loan or the principal deposit, cannot, according to the new law be taken cognizance of by the Magistrate. In accord-

1. See No, 28, 6, *ante*.

ance with this rule no unpaid purchase-money due before the year of the Serpent (1888) or on instruments of loan renewed as above are to be taken up; and actions of the sort now pending are, after investigation, to be dismissed, and * * * an order for private settlement shall be made, stating, moreover, that no certificate of discharge need be filed, etc., etc.' "

Appended Note.[1] "It is true, as you state in your letter, that although Art. 9 of our Proposal deals with two classes of claims, yet the recent Order[2] and the Resolution of the Chamber do not mention the former of the two classes. But, although we are to pay due respect to that Order and Resolution, yet, if a case comes up which belongs to the former class of actions, we think that we may avail ourselves of the reply of the government to our Bill, which states that the latter is to be accepted as it is written, except in the points covered by the Appended Notes, and that we may therefore proceed according to the terms of the Proposal [providing for the two classes of actions.]"

(2.) 'Where the claim is one outstanding for 10 years or more, so that compound interest has been reckoned and the debtor has renewed the entire amount in a new instrument of loan or deposit, an order of private settlement shall be made, without giving judgment.'

Rubric. But in actions now pending in which the parties have reached an amicable agreement and the payment of the claim is progressing, there may occur cases [falling under the above article,] in which compound interest has been reckoned and the instrument has been renewed. In such cases what course is to be followed? Are we to treat

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1. By the addressee of the Inquiry. 2. This is wanting; but seems to have been an enacting order or a proclamation embodying the terms of the reform.

No. 28] the claim as governed by the above 6th article of the Resolution of the Chamber of Decisions?[1] Or, as seems to us preferable, shall we make no special inquiry into the facts, [as would be necessary before determining on the dismissal of the action under the above article], and continue to enforce the payments agreed upon by the parties, making an order for the production of accounts[2] and issuing the proper orders?"

Appended Note.[3]

"As regards your inquiry, our opinion is that all actions on money loans in which compound interest has been reckoned and the instrument renewed, whether the parties have or have not reached an amicable agreement and filed a certificate to that effect, should be dismissed, in accordance with the Resolution of the Chamber of Decisions."[4]

8. *Resolution of the Trial Bureau*[5] *in regard to Procedure.*

a. "Tempo XIV, Hare, 6 (July, 1843.)

A reform having been effected in the method of disposing of actions on money loans, we, the members of the Trial Bureau, have agreed among ourselves as follows, in respect to our own procedure in such cases:

(1.) It has been customary, in actions not coming before the Chamber of Decisions but tried and adjudicated in either of these two Courts, when the parties have produced

1. The article as quoted is the 9th of the Proposal; but the writer has evidently had in mind the corresponding article of the Resolution (Art. 6), which is in effect the same. 2. That is, the payments made from time to time under the composition. 3. By the addressee of the Inquiry. 4. It would seem better to have regarded the case as governed by the analogy of the article of the Resolution, providing for the enforcement of such actions where an instalment-order had already been made. Compare No. 28, 9, *infra*. 5. Of the Lord of Kai's Court.

their written pleadings,[1] to try and decide numerous actions at one time;[2] but this practice tends to produce great confusion of mind [in the litigants,] especially those who are unacquainted with the methods of litigation, and to beget distrust in the minds of creditors, the natural result of which is seen in a diminished money circulation. We therefore propose, by way of improvement, beginning with the ensuing 13th day of the month, to try in each day only 6 or 7 cases, including both new and old.[3] This is not intended to be a permanent regulation, and the above number will be increased from time to time.

(2) In actions coming before the Chamber,[4] after both parties have been summoned and their written pleadings provisionally examined by the Trial Bureau, the case shall be laid before the Chamber, by transmitting the report of the examination[5] and the proofs.

Note, that the precise procedure in laying the case before the Chamber and the form of the certificate[6] shall as before be settled by the Bureau of Complaints.[7]

(3). If, in actions before the Chamber, a private settlement is made at the time [that the case is being examined], the settlement shall be, as before, approved by the Chamber.

(4). Actions brought against residents of a village less

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1. *Kuchi-gaki-tori.* Here *tori*, from signifying the act of taking down the statements, has come to mean the document itself. 2. This means probably that new cases were begun before pending ones were finished. 3. *Shinki-kuji, ko-kuji.* The former were actions entered but not heard; the latter, actions partly heard. The "including" seems to mean that the old cases would be gradually disposed of and still some progress would be made by taking up new ones. 4. *Hyojo-kuji.* 5. *Torishirabe-kuchi-gaki.* The proofs were probably, as cases *passim* indicate, the written statements, documents, etc., obtained by the Trial Bureau on examining the parties. 6. *Tegata.* 7. *Meyasu-kata;* of the Chamber or of the Magistrate's Office, probably the former.

No. 28. than 5 *ri* from Yedo, the complaint in which has been indorsed by the Magistrate [with whom the suit is entered], shall be laid before the Chamber and adjudicated in the manner above stated.

(5). Actions within the jurisdiction of either of the two Courts. Of those actions at present pending before either of the two Courts,[1] about 5 shall be tried each day, the parties being summoned [with this arrangement in view]; for the purposes of rendering judgment the Court may order the production of the account books of the parties, or the drawing up of an instrument of settlement,[2] when the defendant pleads that that amount is too large for him to pay immediately but that he will pay it in a short time, and the instrument of settlement shall be approved as before.

(6). The same subject. Actions newly entered and not yet taken up[3] shall, as already stated, be tried in order, one after another,[4] the parties being summoned and production of the account books being ordered.

As regards actions against military gentry, we have compared and deliberated upon the decision of the Chamber in Bunkwa, III, (Tiger), 7 (August, 1806),[5] the decision of the Private Session in the same period, IV, (Hare), 6 (July, 1807),[6] and the recent decision of the Chamber, and we recommend as follows:

(7). In actions against military gentry, when, after six months, the parties produce a certificate of disagreement,[7] and the case is sent down [by the Chamber to the Trial

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1. These are the "old" actions referred to in par. (1). 2. *Sumikuchi shomon.* 3. *Shinki-kuji.* 4. Thus the 5 old actions and 1 or perhaps 2 new ones make the "6 or 7" of par. (1). 5. See No. 102, 4, *infra.* 6. See No. 102, 5, *infra.* 7. *Hadan-sho.* This was required as evidence that the case so far could not be settled privately and was therefore ripe for the Court's attention. The "six months" was apparently the regular interval ordered for the purpose of compromise in actions against military gentry. See No. 12, *ante.*

Bureau], the Bureau shall try the case twice,[1] and, if in the interval a private-settlement is reached, shall, as before, order [the parties] to request leave to withdraw.

(8). If a private settlement is not reached, [the Bureau] shall, after trying the case twice, order the parties to make out a certificate of disagreement, and shall send the case up, through the Bureau of Complaints.

Note, that the process of sending the case up to the Chamber shall in every case be managed by the Bureau of Complaints.

(9). If in the action thus sent down to the Trial Bureau there has already been a joint-pleading[2] before the Chamber, [the Trial Bureau] shall summon and examine the parties, and set forth to them the merits of the case,[3] and, if then the parties petition for leave to withdraw,[4] permission shall be given, as before.

(10) If a private settlement is not made, [the Trial Bureau] shall try the case within 60 days, and if it cannot be disposed of within that time,[5] shall take up the proofs [from the parties], and send the case up [to the Chamber], through [those members of] the Bureau of Complaints who originally took down the written pleadings of the parties.[6]

Note, that the process of sending a case up to the Chamber shall in every case be managed by the Bureau of Complaints, as before.

The above is the result of our deliberations. We have obtained the sanction [of our superior for them]; and he has

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1. Apparently in effect two efforts to bring about a compromise. 2. *Taiketsu*. 3. *Ri* (advantage)-*gai* (disadvantages); the various considerations bearing on one side or another. 4. The Japanese idea is that both should join in the instrument. Compare the custom of having both parties sign an acknowledgment of the judgment. 5. That is, if the parties refuse to compromise or accept the decisions reached by the Bureau. See (8). 6. *Kuchi-gaki-tori*.

No. 28] instructed us to consult our colleagues of the other Department."

b. Answer of the Trial Bureau.

"We beg to reply that the Lord of Totomi[1] has examined your report, and has declared that he has no objection to make. We shall henceforth act in accordance with its terms.

Dated 6th month.

The Trial Bureau."

9. *Inquiry of the Trial Bureau*[2] *in regard to money Actions.*

Dated Tempo, XIV, Hare (1843.)

"(1.) With reference to the mode of proceeding where a money action [3] has been brought, but the parties have made a private-settlement and have handed in an instrument of settlement, and the cause has again been brought before the same Court,[4] we find the following clause in the decision of the Chamber: 'If in any action final judgment has been rendered, then, even though the action be for unpaid purchase money due for more than 10 years, or upon an instrument of loan in which the original principal and interest have been re-written as the principal, the old rule shall obtain [and the case shall not be re-tried or enforcement of payment be refused because the new rule refuses to entertain such actions].[5] Our question is whether we may not by analogy apply this rule to the case above mentioned of an action being renewed?

(2.) It has been decided[6] that the interest of 3 *rin*

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1. The other Town Magistrate. 2. In the office of the Lord of Kai. 3. *Kingin-deiri.* 4. Probably to enforce payment of an instalment. 5. See Art. 7, in the Resolution, *ante*, No. 28, 6. 6. See Art. 12 of No. 28, 2.

per day formerly payable on advances[1] for dried sardines shall no longer be sanctioned. May we not by analogy apply the same rule to the interest on the investment-advances[2] for timber and fresh fish?

We beg to make inquiry on these points.[3]

Hare, 6th month (July.)

Rubric. Though we have received no special answer to the above inquiry, still the matter is determined by the inquiry already made by the Lord of Kai to the Lord of Totomi.[4] "

[No. 29] *Disposition of Money Actions.*[5]

Dated Tempo, XIV, Hare (1843).

1. "*Claims to be treated after the analogy of house-pledge loans.*

(1) House-pledge loans;

(2) Loans on pledges of reliable property;

Rubric. But if there is no counter-seal of the ward-officials, relatives, and [ward]-representatives, these are to be treated like [ordinary] money loans.

Appended Note. Besides these, "liability-money"[6] and

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1. *Shiire-zenkin.* 2. *Zenkin;* apparently the same as *shiire-zenkin,* money advanced by the wholesale dealers to the producers as capital; interest had formerly been charged on it, for which see the Section *infra* on "Interest." 3. Probably to one of the Magistrates. 4. See No. 28, 7, p. 103. 5. This is probably a Resolution of the Chamber summarizing for reference the results of the reforms of No. 28 as regards the classification of actions. It is No. 38 in the original compilation, but it evidently belongs in this place. 6. *Hiki-oi kin.* This is obscure; but possibly may be an undertaking to make good a default or injury.

No. 28] other [similar claims] sanctioned by law are to be treated as prescribed in the other document.[1]

(3) Bills of exchange:

Rubric. But if they bear interest, they are to be treated like [ordinary] money-loans.

(4) Building-money;

(5) Remittance-money;

(6) Sundry-expense money.[2]

Rubric. But if it bears interest, it is to be treated as above stated. For other particulars, reference is to be made to the Appended Note in the other document.

(7) Money granted.[3]

(8) Money deposited.

(9) Exchange-money.

(10) Character-security money.

Rubric. But if it bears interest, it is to be treated as above stated.

(11) Yearly-instalment money;

Terms of payment for these classes of claims:

Amount.	*Term.*
30 *ryo* or less	40 days.
30 *ryo* or more	60 days.
50 *ryo* or more	80 days.
100 *ryo*	150 days.

More than 100 *ryo*, the term to be settled by the Court in each case.

1000 *ryo* or more ..... 12 months, including an intercalary month.

2. *Claims to be given double the term of house-pledge loans.*

(1) [Ordinary] money loans;

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1. The compiler thinks (and rightly) that this "other document" is the proposal of No. 28. 2. See No. 28, Art. 17. 3. See No. 28, 2, Art. 20.

(2) Temple-fund loans;
(3) Patent-fund loans;
(4) Loans on hypothecs;
(5) Loans on behalf of another;
(6) Loans for taxes paid in advance;
(7) Wages for labor;
(8) Earnest-money;
(9) Dowry money;
(10) Unpaid purchase-money;
(11) Investment-money;
(12) Money loaned on deposit of miscellaneous utensils;
(13) Money loaned on deeds of sale of miscellaneous articles;
(14) Ground-rent;
(15) Shop-rent.[1]

Terms of payment for these classes of claims:

Amount.	*Term.*
30 *ryo* or less	80 days.
30 *ryo* or more	120 days.
50 *ryo* or more	160 days.
100 *ryo* or more	300 days.
1000 *ryo* or more	24 months, including an intercalary month.

[No. 30] *Memorial in regard to Money Actions.*[2]

1. *Proposal.*

"(1). Money actions before us have recently increased to such an extent that, if we are to try all of them, as we do now, the Court days of the Chamber (the 4th and 21st of every month) will be occupied with those actions exclusively,

1. For all the preceding terms, see No. 28, 2, *ante*. 2. *Kingindeiri*. Cited from "*Kajoruiten*." The document bears no date.

No. 28] and no others can be heard; moreover, as a result of this,[1] the morals of the Chamber may degenerate.[2] We therefore propose that all actions on money loans, unpaid purchase-money, etc., in which the Chamber or a Magistrate has been accustomed to order a term of payment, shall be tried and adjudicated only twice in each year, that is, once in the 4th and once in the 11th month. This, we think, will lighten the burden of the Chamber. Moreover we observe that when, some years ago, a Private-Settlement Order was issued for all money actions, and no such cases were heard by the Magistrates, no inconvenience resulted. For these reasons we make the above proposal.

(2). However, actions for domestic servants' wages, house-pledge loans, loans on reliable security, loans evidenced by a deed of sale, and rent of land or shop (which are like rent of cultivated land [3]), shall be tried and adjudicated as at present and a term of payment fixed.

2nd month."

2. "We acknowledge the receipt of your order instructing us to establish the law as stated in our proposal.

Year of the Dog, 3, 9.

Chamber of Decisions, Full Session."[4]

[No. 31] *Memorial in regard to Money Actions.*

1. *Proposal.*

"We have received your instruction sanctioning our

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1. The entertaining of money actions. 2. A not unnatural notion for *samurai*. See Dr. Knox's "A Japanese Philosopher," Trans. Asiat. Soc. Jap., 1892, *passim*. 3. *Nengu*. 4. It is possible to make a guess at the date of this document, which is a memorial laid before the Council of State by the Chamber. The interesting question is whether it comes after the Tempo period and thus indicates an unfortunate retreat from the reforms then

recent memorial and requiring the Magistrates to express their opinion as to whether, when a judgment has been rendered in the 4th month, the parties shall appear again in the next 11th month and report as to the partial or entire

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accomplished. It would seem rather that the date is somewhere before the middle of the previous century. In the first place, the spirit of the document is more characteristic of the *samurai* officers before they had been trained by generations of judicial experience. The Chamber had been established only in the middle of the 17th century. Morever, it is difficult to believe that the enlightened consideration of the people's needs shown in the documents of No. 28, *ante*, should have been succeeded by a spirit as inconsiderate as that of this document. Second, the reference to the Private-Settlement Order of "some years ago" indicates that there was but one such order in the minds of the writers; if they had written in the 19th century, at least three should have come to mind and some distinctive naming of the one indicated would have been made. The reference also implies a personal acquaintance with the facts. Third, the list of excepted actions in the second paragraph is very crude and could hardly have been made at or after the epoch in which the various species of claims referred to in Nos. 28 and 29 would have called for recognition. The summary and crude style of the whole document points to the same conclusion. Last, the provision in the Yenkyo III Order (1746), by which cases were to be heard in the Chamber on the 4th and 21st days of every month (No. 5, *ante*) points to a possible contrary practice prior to that; and it may be that the Order of 1746 indicates the abandonment of the practice established in the present document and the return to double Court days in each month. At any rate one may provisionally place this document somewhere between 1729 (the date of No. 1. *ante*) and 1744. But the only Dog years there occurring are 1729 and 1741, the latter being of course the more probable. The citation is said to be from *Kajoruiten*. This is the name of the work (dated 1767) appearing in Rudorff's *Tokugawa-Gesetzsammlung* as *Kujikata-Osadamegaki*, a collection of important enactments issued before that date. If this were the source of the document a latest date would be determinable for it. But Rudorff's edition does not contain it, and there may exist two collections of the name *Kajoruiten*. However, this fact would indicate that the one here cited is a still earlier one, as the 1767 edition was too well-known to have the name again used.

No. 28] discharge of the claim, and whether, when a judgment has been rendered in the 11th month, the parties shall make a similar report in the next 4th month. Our opinion is as follows:

(1.) Our recent Memorial having been sanctioned, we shall, when any new action is brought on a money loan, summon the plaintiff to the Chamber of Decisions, on the regular day in the 4th month, and shall serve on the defendant a summons[1] to appear on the regular day of the next 11th month. If in the meantime the whole claim is discharged, an order to file a certificate of discharge shall be made. If, however, a portion only or none at all has been paid, the Court shall, on the appearance of both parties in the 11th month, order the defendant to execute an instrument engaging to pay without fail before the next 4th month. If in the meantime the claim is discharged, an order for filing a certificate of discharge shall be made, as above; if not, the Court, on the regular day of the next 4th month, shall make an order for the payment of a reasonable sum, in fixing which the amount of the debt and the condition of the defendant shall be taken into estimation; of this sum payment shall be ordered without fail before the succeeding 11th month. This shall continue from year to year [until all is paid].

(2) In instalment actions where payment within a term has been ordered in the Chamber of Decisions or a Magistrate's Court, since our recent Memorial has been sanctioned, the Court, on petition of the plaintiff, shall serve on the defendant a summons to appear on the regular day of the 4th month. If in the meantime the claim is discharged, an order for the filing of a certificate of discharge shall be made; if not discharged, a reasonable sum shall be taken and payment ordered on the regular day in the 4th month, and an order issued to pay the remainder without fail in the

1. *Sashigami.*

11th month. This shall continue from year to year [until all is paid].

We request your consent to the above proposal.
3d month."

2. "We acknowledge the receipt of your order approving the method of procedure proposed by us.
Year of the Dog, 3, 9.
Chamber of Decisions, Full Session."[1]

[No. 32] *In Actions by Royal Temples for Money Loans the Creditor should not be entitled, in the Complaint as indorsed by the Bureau, a 'Money-Lending Office.'* [1]

A Communication by the Temple Magistrate, Abe, Lord of Ise, announcing the passing of such an Order.
Dated Tempo, XIV, (Hare), 4, 6 (May 6, 1843).

1. *Letter to the Town Magistrate's Staff from the Lord of Abe.*

"In regard to the general management of the loans made by the Prince-Abbots of royal temples,[3] I have, after

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1. This document belongs with the preceding one. 2. The text of the orders shows that this title is a poorly chosen one. 3. *Miya-monzeki.* The term of *monzeki* was first applied to a member of the Imperial Family (including the four branch families) upon retirement as Abbot to one of the leading Buddhist temples. The Prince-Abbots were afterward known as *miya-monzeki* in distinction from *sekke-monzeki.* In the course of time, the name of *monzeki* was also given to a member of the *go-sekke* families who went into retirement and entered a Buddhist temple. The *go-sekke* were the five families of Court nobles whose members alone were eligible to the two or three highest Imperial offices. These abbots were

No. 32] consultation with the Lord of Echizen, issued the decrees enclosed and have made similar orders for the Dentsu Temple [of Yedo], Daitoku Temple of Koya, and Tokei Temple of Kamakura. As there are some points in which the interests of townspeople are affected, I send you copies for reference."

2. *Order No. 1.*

"To the Retainers of
The Prince-Abbot of Seiren Temple;
The Prince-Abbot of Yemman Temple;
The Prince-Abbot of Myoho Temple;

Although a decree was made in Bunsei (1818-1829) regulating loans of Prince-Abbots, yet recently there has been much misdealing, by which debtors have suffered grievously. Especially contrary to that decree is the practice of making "additional-moneys,"[1] which cannot possibly be allowed. We should have taken measures against this before, but have tolerated it only because it has been so long a custom among the retainers of the temples. But now that the Government has determined to make a general reform in the practice of the Courts, we order that, when action is brought on a loan [nominally that of the Abbot], the member of the Complaint-Bureau before whom it comes shall, without waiting for a communication from the Abbot himself, cause the retainers to enter their complaints in

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called *jun-monzeki* or *sekke-monzeki*. A strict distinction was kept between the temples presided over by a member of the Imperial Family and those presided over by the *go sekke*. There was no instance of a *miya-monzeki* ever entering into the temples assigned to the *sekke-monzeki*. Nor did a member of the *go-sekke* families ever preside over the temples assigned to the *miya-monzeki*.

1. *Sashi-kuwaye-kin;* where some official of the temple, in addition to the loans of the temple itself (of the Abbot, as they are here called) lends his own money in the name of the temple, so as to share in the advantages given to such claims.

their own names [as creditors], and that every instrument of loan [thus sued upon] (except the sums reported in Bunsei)[1] shall be rewritten as an ordinary debt, and the creditor's name changed into that of the real lender, and that the new instrument, with the old one (its seals having been cancelled) shall be produced at Court. In future the confusion of the two kinds of loan must be avoided, and transactions of the above sort must be evidenced by ordinary instruments of loan. Moreover, to remedy further the present loose methods, we order that the retainers who transact money-loans for Abbots shall abandon the present practice of having a number of money-lending offices and shall maintain one such office only, and for that purpose shall, after consultation with his associates, hire a piece of town-land[2] and move the office thither by the 10th month of the present year. This shall be their only place for money-lending, and shall be termed a "sojourning-inn,"[3] care being taken not to give the appearance of a Government Office.[4] There they shall carry on their business uprightly. Otherwise than in the above manner no [retainer of a temple] shall do a money-lending business, either in his own house or in another's.[5] These persons, in spite of the rule of Bunsei[6] about the rate of interest, frequently take it upon themselves to violate that rule and to exact usury. This is unlawful, and they shall henceforth take no more than the rate fixed in that law. Nor shall they take [interest under the guise of so-called] "gratitude-money"[7] or "expenses."[8] Whenever a loan instrument is re-written, with interest and the original principal as principal, the rate

1. Perhaps an exception had there been made for certain classes of existing loans. 2. That is, outside the temple-enclosure and among the merchants' houses. 3. *Ryo-shuku.* 4. *O-yaku-sho;* the debtors being more liable to imposition and extortion if they thought that the office had any official character. 5. Apparently this applied even to the loans on behalf of the temple-funds. 6. See *infra*, "Interest." 7. *Rei-kin.* 8. *Kakari-mono.*

No. 32] of interest shall be gradually lowered [at each successive renewal]. In every instrument where there are joint borrowers (except where a rural district borrows), the amount borrowed by each one, whether of the military gentry, townspeople, or villagers, shall be distinctly stated in separate items, and every instrument not containing such an itemized statement shall be void. Where a debtor is one of the townspeople, the creditor shall show the seal to the officers of the ward, and shall receive from them a certificate of its genuineness. In all the above matters [the retainers to whom this is addressed] shall avoid all misconduct, acting with uprightness and zeal, under pain of punishment in case of disobedience."

3. *Order* No. 2.

"To the Retainers of
The Prince-Abbot of Ichijo Temple;
The Prince-Abbot of Butsuko Temple;
The Prince-Abbot of Senshu Temple." [1]

4. *Rubric.* [2]

"With the above decrees was sent no draft of the acknowledgment of the decree by the wards; we therefore prescribe the following form:

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1. This decree is in substantially the same words as the above. After the passage "the creditor's name * * * * into that of the real lender," it reads: "And no clause shall be inserted declaring that the money is loaned by the Abbot because of some special reason. Thus in all future transactions of this sort, the loan must be evidenced by ordinary private instruments *(aitai-shomon)*." The latter passage is of some value in throwing light on the troublesome term *aitai*, already discussed in the notes to No. 1. The term used in the first title for "prince-abbot" is *miya;* in the second and third, *monzeki*. Yet the title of the first temple is given by Dickson, "Japan," p. 43, as *monzeki*. There seems to be no real distinction of classes intended; probably custom associated a special word with a special temple. 2. Probably by the Town Magistrate.

(A copy of the decree.)

We respectfully acknowledge the receipt of your order to inform our companies that the above decree has been received at your Office [from the Temple Magistrate,] and to record our seals in the official book.[1]

Tempo, XIV, Hare 4, 9 (May 9, 1843).

Tonuzo, representative of Shozayemon, now ill, Headman of Shinagawa Block;
Yazayemon, Headman of Hiramatsu Block;
Jisaburo, Headman of Block No. 2, Ta ward, Kanda district.

The above order received at the office of Taru Tozayemon.[2]"

[No. 33] *Disposition of Loans from the funds of the Three Temples of Kumano*[3] *and from the Privy-Funds*[4] *of the Lord of Kii.*

Dated Kokwa, II (Serpent), 8, 29 (Sept. 28, 1845).

1. *Memorial*[5] *asking the Private Opinion [of the Council of State] regarding the treatment of Loans from the funds of the Three Temples of Kumano and the Privy Funds of the Lord of Kii, from Kuze, Lord of Izumo.*[6]

"In regard to loans from the funds of the Three

1. This clause may refer either to the seals appended below, or to a requirement that sealimpressions should be recorded for the purpose of the certificate mentioned in the decree. 2. An officer, apparently, of the Magistrate's Office. 3. *Kumano san-zan* ("three mountains," because temples often stood on hills or mountains). These are a famous group of temples in the *kuni* of Kii, in the domain of the lord of Kii. 4. *Yodo-kin;* the money used for the private expenses of a feudal lord. Kii was one of the *Gosanke*, the three related families from among whom the Shogun was chosen, when no direct heirs were left. 5. Addressed to the Council of State. 6. Temple Magistrate.

No. 33] chi,[1] there has been a gradual loosening of restrictions, debtors have become more negligent, and the arrears have constantly accumulated. Money was even lent out to those who were no better off than day-laborers and had no resources of any sort; and the debtor constantly petitioned for delay, for the creditors were not strict in enforcing payment and the Court was too busy with other matters to be especially zealous in these. Even at the end of these periods of postponement the debtors frequently failed to bring in the amount due. The result was that a loan was the source of very little profit. Some of the debtors would petition for delays of 2 or 3 days, and then bring in [a small amount] in 2-*shu* or 1-*shu* pieces[2] or even in copper or iron money. Where the debtor was one of the military gentry, his retainer, knowing that the instalment-payment process could not be put in use against him, would often plead a bad harvest in his fief or excessive expenses in the performance of his feudal duties, and evade making any payment; so that it was hard to obtain even interest, much more so the principal, from such persons. Affairs having come to this pass, the Lord of Idzumi after the last report above-mentioned, in the 10th month of the last Dragon year (1844,) from the Lord of Kii, after consultation in Private Session, made out a schedule of instalment-payments, proportioned to the amount of the debt in question. His opinion was that, if the Court were to grant every request for postponement and to sanction the payment of any small sum which the debtor might choose to bring from time to time, the creditor would not get back his loan even after the lapse of countless years; while new suits would constantly be brought and the body of defaulting debtors would grow to an enormous size. He decided, therefore, to grant no request for delay unless

1. Who became Temple Magistrate in 1834. 3. These were small pieces of silver; 4 *shu* made 1 *bu*, and 4 *bu* made 1 *ryo*. See Introduction.

the debtor had already paid in such an amount that there was some reasonable probability of an ultimate full payment; and instructions directing strict conformity with this rule were sent around to the retainers of the different gentry.[1] When I succeeded to this office and the matter came into my charge, I several times made similar orders, and from time to time summoned the debtors [and gradually decreased the list]. Many times I have been put to unnecessary delay and inconvenience through [false excuses of] a mistake in the debtor's name, or his death, absconding, retirement, or removal. Moreover it has become a notion of the commoners that the repayment of a loan from a Government-fund[2] is treated with laxity, while that of ordinary persons, which ought to be made by a private-settlement, is rigidly enforced: and, in consequence, some persons do not even appear when summoned, while others appear, indeed, but without being accompanied, as they should be, by their local officials,[3] and they offer the most unconscionable pleas. I am told, in fact, that it has for some time been their habit to treat the summons of a Magistrate with neglect, if it is one issued in a money action. Their contumacy goes even further, for after [the complaint is returned with] the information that the debtor has absconded, retired, moved, or died, it often appears on careful investigation that these are falsities, invented by the countersealers to delay the proceeding. The practice of the past years has been very lax, in spite of these evil results, both because the loans which are the subject of this litigation are "communicated" by the Lord of Kii, and so the action, though a money-action,

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1. That is, the retainers of the noble borrowers were instructed that they must be more prompt with their payments. 2. The Lord of Kii was a *daimyo*, but the term *kogi* (Government, public) would be applied to him by his own people, and hence might be loosely used by others with the same meaning. 3. A commoner was required to be accompanied to Court by these officials, who were looked to for some account of his character.

No. 33] has no "petitioner,"[1] and also because the Magistrate's Office has been too much occupied with other matter. The debtors' disregard of the Court's authority has reached such a point that the vassals of the various noble houses often neglect to bring in any money on the days appointed for payment, and boldly write to demand new delays; and when the retainers of the Lord of Kii refuse absolutely, they bring in some petty amount, request a moderate delay, produce a new instrument already drawn up, and demand that the debt be re-written,—thus showing no sense of shame and acting virtually in defiance of the Court's orders. Our action hitherto has been confined to peremptory orders to pay, and we have not proceeded to extreme measures, in the way of examination before the Court, etc.; but the repeated defaults and the general disregard of our orders affect the dignity of the Court and I am much dissatisfied with the state of affairs. If, indeed, the purpose of your Instruction of the last Dragon year,[2] requiring the claims in question to be treated differently from ordinary loans, was nothing more than to perserve the existence of such claims,[2] I will give myself no further anxiety on the subject, and will confine myself to urging payment by personal persuasion of debtors from time to time, except where their contumacy does not directly endanger the very honor of the Court, and this will relieve me from much tedious detail. But I understand that the real purpose of the Government in that law was to facilitate the more speedy collection of these money-loans;

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1. *Tassuru* (communicate); *negai* (beg, petition)-*nin* (person). The former term was the appropriate one for one of the Lord of Kii's station when making a private communication. The idea seems to be, as appears below, that these claims arose from "gifts" of money, and hence there could be no legal foundation for an action to recover sums professing to be out-and-out grants. 2. See *ante*, at the beginning of the letter. 3. Lit., "to prevent the *kashitsuke* (loans)-*tsubure* (destruction)."

and I think, therefore, that whenever a debtor, after requesting a delay, fails to bring in the proper amount at the time appointed (the instalments and periods to be determined according to the schedule already agreed on),[1] he shall, as in the ordinary case of deficient payment of an instalment, be detained at the bench,[2] while his voucher[3] should be sent to fetch the money; and that if the debtor still continues in default, he shall, if a farmer or townsman, be sentenced to the hand-stocks, or put in prison, and, if a retainer of a noble house, shall be committed to the custody of relatives or friends or confined in the prison of the gentry.[4] Unless some such measures are adopted, we can hardly expect to secure the satisfactory payment of debts; and if we do take these steps, I believe that the present license on the part of the debtor class may be restrained and a thorough improvement be ultimately effected. It is said, however, that if such measures are enforced, the belief might spread among the lower classes that, as the request of the Kord of Kii [for stricter enforcement of payment] has been granted, the Government is about to exact without mercy the moneys due to it, [and hence that public discontent and unrest will be produced]. Though no Governmental measure could in fact be so tainted by greed for mere gain as to justify such a belief, [I do not think that we need be deterred by such a possibility], for, in adopting any measure of this sort, we deal with a multitute of debtors and must in any case encounter more or less criticism. I have decided to lay the matter before you for your opinion, before issuing any instructions of the above nature, since [without your previous sanction] I should not feel so ready to enforce

1. See *ante*, p. 124. 2. See *ante*, p. 123. 3. The official or other person (the landlord or house-manager, in the case of renters in towns) who was required to accompany the defendant to Court. *Sashi-soye-nin* (accompanying-person) is the vernacular term. 4. *Agari-ya*.

No. 33] obedience from the retainers who are within my jurisdiction, and their contumacy would in that case only become more aggravated. I repeat, that there can be no better means of facilitating the collection of debts than to proceed on the lines of last year's Private-Session decision above-mentioned[1] against those who neglect to pay the amounts as ordered and those who wilfully disobey the summons of the Court. The lending of money has an excellent effect upon the activity of the money-circulation, but it is essential that there be mutual fidelity on the part of borrower and lender. But in the present case the Lending-Offices of the Lord of Kii have asked in vain for payment, and have at last notified this Court and obtained its assistance. We might suppose that the debtors, having obstinately held out up to this point, would now yield and perform their obligations with fidelity. But experience shows that they do not do so. There is nothing left but to adopt measures of severity calculated to root out this disregard of their obligations, until finally they become weary of resistance and pay what they owe.

In this situation of embarrassment and anxiety, I request your opinion on the subject.

Year of the Serpent,
4th month."

2. *Opinion on the same subject from the Finance Magistrates.*[2]

"Treatment of loans from the endowment fund of the Three Temples of Kumano and the privy-fund of the Lord of Kii.

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1. See *ante*, p. 124. 2. This opinion, with the next two, was handed in in the course of the deliberations following the preceding memorial. The one numbered 4 was the first in time; but for clearness' sake this one is placed second, as the compilers have it.

In the 6th month of last year, the Lord of Yamashiro, at that time Temple Magistrate, presented a memorial to the Council of State, who referred it to the Chamber of Decisions for consideration. This memorial, [so far as it concerned the present subject,] was in substance as follows:

'* * * In case of secured claims, the Court shall, in accordance with the provisions of the instrument, order the sale of the property given as security, with payment out of the proceeds, if they do not suffice, the debt shall be paid as far as possible. If in spite of this a deficiency remains, or if the debt was not secured [and the debtors fails to pay when ordered], an order shall be made that if settlement is not made at the end of a period double that given in case of house-pledge loans (reckoning from the end of the term first given), then, if necessary, his cultivated land, residence-land, houses, storehouses, and family-belongings shall, as in case of execution in bankruptcy, be confiscated [for the benefit of the creditors]. The same process shall be applied where the debtor is a shop-renter or ground-renter. In all cases the sale of the property shall be held in the presence of one of the creditor's local officials. Where the case concerns one of the military gentry as debtor, and he repeatedly pleads [pecuniary] misfortune in excuse, knowing that he cannot be brought into Court, the retainer representing him shall be committed to the keeping of friends or relatives, or, if need be, sent to the prison of the gentry, to be liberated, in either case, only upon payment made. Or else, if it seems best under the circumstances, an order shall be made to take from the tax-rice of the fief[1] or the income-fief[2] of the debtor an amount of rice equal in value to the instalment-amount of 1 year, sell it at the local market-price, and hand the proceeds to the creditor. * * *'

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1. *Ryobun.* 2. *Chigyo-sho.* See Introduction.

No. 33] The opinion of the Town-Magistrates and Finance Magistrates, upon deliberation by the Chamber, was as follows:

'* * * * If the debt is unsecured the Court should endeavor, as far as possible, to persuade the debtor by setting forth the merits of the case,[1] and thus enforcing its payment with more care than in ordinary cases. If payment is still delayed, the debtor shall be ordered to execute a new instrument, and a term of days shall be allowed, proportionate to the amount of the debt. If still no settlement is made, an order of execution in bankruptcy should issue. But in most cases there is a security of some sort, and in that case the Court should proceed in accordance with the provisions of the instrument. When it appears that no settlement has been made, an order of execution in bankruptcy should issue, after the above proceedings have been taken. But in the case of a debtor who belongs to the military gentry, nothing should be done except order payment by instalments, an attempt being first made to obtain payment by urgent persuasion, until it appears that an instalment-order is inevitable.'

There was also another communication,[2] as follows:

'As rumors of unjust dealings have arisen in connection with these loans, the amount of the original claim should be fixed, and no additional-moneys[3] should henceforth be allowed. Moreover, the practice hitherto in vogue in regard to these additional-moneys (apart from the chief question whether they should or should not be treated as ordinary money-loans) is not a satisfactory one. Instructions should be issued that henceforth, in a suit for their recovery, the debtor shall be summoned by a summons-paper[4] only

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1. *Rigai.* 2. It was drawn up in a separate document probably because it dealt with a different subject. 3. *Sashi-kuwaye-kin*; private money of the retainers lent as a part of these funds. See No. 32, *ante.* 4. *Sashigami.*

where the loan is from a privy-fund,[1] but in all other cases he shall be sued in the regular tribunal[2] through the Magistrate with whom the complaint is entered.[3] If this plan as to loans from privy-funds should prove desirable, the payment should be made (in case of all sums up to 10,000 *ryo*) at the Government-Office in Bakuro ward. Of course, as these sums are in reality no different from ordinary money-loans, the actions for their recovery may [in all other respects] be treated like ordinary money actions.'

The Temple Magistrates, however, [would not yield to the opinion of the others and] declared that, as they had formed their convictions after thorough deliberation, they had nothing further to say.[4] Subsequently the Council of State issued another Instruction to the Chamber to consider the matter again and determine upon the best method of treating these cases. Again no decision was reached, each party reporting that it maintained its own opinion. Finally in the 8th month of the last Dragon year, an Instruction[5] was issued that these loans were henceforth to be treated 'differently [from ordinary money loans] and according to the old practice.' We must of course follow these instructions [and treat them 'differently.' But this does not mean that they should be treated in a more favorable manner.] The whole question

1. *Yodo-kin*; see *ante*, p. 121. 2. *Sono suji*. 3. *Meyasu-kakari*. The usual procedure would be, where the defendant was not in the jurisdiction of the Temple Magistrate, to try the case in the Chamber, the complaint being entered with the Temple Magistrate. Here it would seem that these moneys, in the case of privy-fund loans, could be specially recovered without going to the Chamber. This supposes that summons by *sashigami* was peculiar to the Courts of the individual Magistrates, a rule of which there are elsewhere many indications. The summons of the Chamber was made by indorsing *(uraban)* the complaint. 4. The chief point of difference was that the Temple Magistrates wished to allow execution against the military gentry, and the others did not. 5. The one cited at the beginning of Letter 1, *ante*.

No. 33] of whether they are to be treated in a different manner arose in a discussion as to the method of forcing payment by these debtors, and it has been finally decided that the reform recently made should not apply to these loans, which should be governed by the old procedure. In spite of the above issue of the controversy, another memorial[1] has now been presented by Kuze, Lord of Idzumo, complaining that no [further] instructions have been issued in regard to this subject, and making certain statements about the Lord of Kii's [demands for enforcement of payment]. But the Lord of Idzumo's memorial seems to us to be ill-timed. He has deliberated anew upon the matter and proposes certain measures, more severe than those hitherto in vogue, for enforcing payment from these debtors. But now that the above Instructions have been issued, [such propositions are no longer in place.] Furthermore [there are historical reasons for the distinction made in the case of the present loans.] In Bunkwa, XIV, Ox (1817), the late Aoyama, Lord of Shimotsuke, then presiding [Councillor of State,][2] in answering an inquiry by the Lord of Kii regarding one of these loans from the funds of the Three Temples of Kumano, stated that he would give attention to any general request of the Lord of Kii for diligence in enforcing payment of loans from these endowment funds; but that, where a particular claim was in arrear [and action was brought for recovery], it could not receive any specially favorable treatment, but must follow the rules for ordinary actions for arrears of loans. In respect to loans from a privy-fund, also, the same Magistrate declared, in answer to an inquiry from the Lord of Kii, that he could accede to general requests only, [as above stated.] Now the letter then sent [in reply] by the Lord of Kii contains the following: 'Although he had in a preceding year requested Sakai, Lord of Wakasa,

1. Letter 1, *ante*. 2. He was Temple Magistrate 1793-1796, then Councillor of State 1804-1835.

then presiding [Councillor of State],[1] to have these loans attended to in the proper tribunal,[2] yet the reply had been that no special order of payment could be made for arrears of the loans, though cognizance would be taken of them as ordinary private loans. He now made inquiry again on the same subject, though perhaps against the wishes of the Magistrate. The fact was that the nature of the loans was such that it was impossible for him to seek the Courts in the ordinary manner, [as the Magistrates had told him to do], since the sums had been originally lent out under the name of "gifts,"[3] so that there could technically be no such thing as money due and unpaid in connection with such a transaction. He therefore asked permission to prefer privately certain general requests for payment.' It thus appears that the Lord of Kii is not in a position to insist on the payment of these alleged loans. But afterwards, in consequence of the Lord of Kii's repeated requests, they began little by little to receive a 'different'[4] treatment; until finally, in the last Hare year, 12th month (February, 1844)[5] when a general order was made for the private-settlement[6] of all loans by the people and a similar favor was accorded even to the borrowers of government-money,[7] the loans of the Lord of Kii were exempted from the law. Thus at last it came to pass that they received a 'different' treatment. The result thus reached was, in our opinion, a necessary and proper one, and we think that it would contradict the spirit of the rule laid down in the Bunkwa period[8] if we were to take any

1. From 1815 to 1818. 2. *Sono suji*. 3. *Kudasare-kin'* (condescension-money). 4. That is, "special." 5. See *infra*, Section VII, "Private Settlement." 6. *Aitai-zumi*. 7. This is not true, if it means that private-settlement was ordered for Government loans. See *infra*, No. 118. But the reference may be to the instalment-payments permitted (No. 91, *infra*) by an order of the same date. 8. See p. 132 The argument is perhaps a little insincere, and apparently suggests that as the spirit of the answers then received by the Lord of Kii was that he could not claim private favors, so here he must not

No. 33] more severe measures for the collection of these debts. There are, indeed, no invariable principles governing the treatment of money loans, even Government-loans, as there are of other subjects of litigation. [Still there must be a certain amount of consistency and uniformity,] and we cannot agree that it would be proper to use any harsher measures with these two classes of loans than with Government loans, [which are on the same footing]—especially in view of the benevolent intentions manifested by the Shogun in the recent law reforming the procedure in money-loan actions.[1]

We therefore advise that no action be taken upon the memorial in hand, and that instructions be issued directing the strict observance of the object of the previous order,[2] and that the old practice be followed in enforcing payment of these loans.

Year of the Serpent (1845),
——month.[3]
Wakizaka, Lord of Awaji,[4]
Naito, Lord of Kii,[4]
Aoyama, Purveyor of Imperial Supplies,[4]
The Town Magistrates,[5]
The Finance Magistrates.

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ask them. Then in answer to the probable thought that the proposition is merely to assimilate them to all other loans, he claims the virtue of consistency for his side and declares that they stand on the same footing as public loans. When or by what enactment those were more leniently dealt with does not appear. 1. Referring apparently to the reforms described in No. 28, *ante*: but possibly to the Private-Settlement Order of 1844, No. 118, *infra*. 2. Cited at the beginning of Letter 1, *ante*. 3. The figure is missing. 4. These three were the remaining Temple Magistrates, the writer of the Memorial being the other. They sign here, because though the minority opinion (the next document) was theirs, the opinion of the Finance Magistrates prevailed, as the Town Magistrates came over to it and formed a majority; the dissenters then yielded and signed the document as the Resolution of the Full Chamber. 5. The Town Magistrates wrote the Opinion numbered 4, and then decided to sign the opinion of the Finance Magistrates.

3. *Opinion on the same subject from the other Temple Magistrates.*

"Statement of our individual opinion respecting loans from the endowment-fund of the Three Temples of Kumano and the privy-fund of the Lord of Kii.

From Wakizaka, Lord of Awaji,
Naito, Lord of Kii,
Aoyama, Purveyor of Imperial Supplies.

The memorial presented by Kuze, Lord of Idzumo, regarding the treatment of loans from the temple-funds of the Three Temples of Kumano and from the privy-fund of the Lord of Kii, recently presented to the Council of State, and referred by them to the Full Chamber for a report thereon, makes in substance the following statements: 'That whereas lately Instructions were issued, after much discussion, that these loans should be treated differently [from ordinary loans] and according to the old practice, [the question arises, What was the old practice?] Now the Lord of Idzumi determined, some time ago, on private consultation, that the principal of these loans should be paid off according to a schedule similar to that used for ordinary instalment payments. Since his incumbency, therefore, the custom has been, in pursuance to his rule, to summon the debtors from time to time and urge them to payment. But notwithstanding this the arrearage has constantly increased, especially in late years. Loans have been made to persons having scarcely any other resources than their daily earnings and the collection of these claims has naturally been accompanied by much laxity; so that it has been customary to sanction the payment of the most trifling instalments, even of a quantity of copper or iron money. Moreover the order for private settlement recently issued,[1] when these debts had been making no

1. Tempo XIV, 1844. See *infra*.

No. 33] return[1] for some 8 years, produced a bad effect upon the minds of the debtors; for, though it is now 10 years since the first order of payment was made [on some of the claims,] there are numbers of them still undischarged. Many of the debtors, in fact, do not appear when summoned; others appear, to be sure, but without their local officials, and make untrustworthy statements. A statement too, that the defendant has absconded, or retired, or removed, or died, is fabricated, in order to delay proceedings against the countersealers. Moreover, among the retainers of the military gentry any one who is punctual in the payment of his debts is looked down upon as a person of no accomplishments, and all sorts of devices are resorted to for the sake of delay. The truth is that their conduct is no less than a defiance of the authority of the Magistrate's Court and an insult to its dignity.

The Instructions of the last Dragon year speak not only of following the old practice, but of treating the cases 'differently.' The Lord of Kii lays particular stress on this term. If the purpose of the Instructions, then, is not merely to preserve the existence of these claims, but to facilitate their more speedy collection, then every defaulting debtor should be detained at the bench,[2] or in case of continued default, sentenced to the hand-stocks, to jail, to commitment to friends, or to the prison of the gentry, as the circumstances may require. Unless some such measures are adopted, there is no hope of securing even partial payment. But if they are adopted, a gradual improvement will be effected in the conduct [of the debtor class.]

We have deliberated upon the subject, and our opinion is as follows: At the time that these claims first a rose, the reply was several times made to the Lord of Kii, in

1. *Uwa-uki;* this has been rendered "outstanding;" here it seems to convey the idea of "due and not being paid;" that is, all payments on account had stopped. 2. See Letter 1, *ante*.

regard to their disposition, that his request could not be granted, and that the loans must be disposed of according to the rules for ordinary money loans. But after some time further requests and communications having ensued on his part, it came about that the payment of the sums due was enforced, although there was no [person in Court as] plaintiff demanding enforcement and hence no [regular] judgment could be rendered. There was thus no further necessity of considering the past [history of their standing;[1]] and it was accordingly ordered, two years ago, in the last Hare year, 2nd month,[2] on request of the Lord of Kii, that these two classes of loans should thenceforward be treated according to the practice then obtaining. When subsequently amendments were made to the rules for issuing execution in bankruptcy,[3] the Lord of Yamashiro presented a memorial, in the Hare year, intercalary 9th month (November, 1843),[4] directed towards the enforcement of the sums then outstanding and unpaid. But on the proposal thus made, [the Chamber] could not agree, and there was a long delay before any order was issued. Meanwhile the Lord of Kii continued to urge the matter upon the Lord of Echizen,[5] stating that he had taken the time to prepare a schedule[6] of the amounts in arrears, [when the loans began to be enforced], that, when afterwards it was ordered that they should be treated according to the practice then obtaining,[2] he had announced this to [his debtors] in Yedo, in Osaka, and in the various provinces; and that, as during the deliberations on the above memorial of the Temple Magistrate no payment had been enforced, he was greatly inconvenienced. Finally, Instructions were issued to the Three Magistrates, in the 8th month of the

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1. That is, they were thenceforth valid, and whatever their previous standing had been, it could no longer affect them. 2. This does not appear. 3. See *ante*, p. 122. 4. See *ante*, p. 122. 5. The presiding Councillor of state. 6. See *ante*, Letter 1.

No. 33] Courts, both within and without them. On the other hand, contumacy in the face of the Court's orders is something that cannot be overlooked. [The rule should be that] any one who defies the repeated efforts of the Court to secure payment and culpably fails to pay, or who is culpable in any other way with respect to the Court's authority, should be severely dealt with, and if circumstances require, sentenced to jail or to the gentry's prison, as the case may be. We think, moreover, that, as the above procedure is not to be adopted because of any applicability of the rules of ordinary loans, it could be left to the direction of the Court, according to the circumstances.

[There is one more point to refer to.] A loan from the privy-fund should be made according to the mode prescribed for loans from the endowment-moneys of the Three Temples of Kumano. That is to say, this rule requires that the sums should be lent out after selecting trustworthy persons, whether military gentry of the grade of *daimyo* or lower, or temples, or villages, or townspeople, as the case may be. They ought thus to have been lent out only to such trustworthy persons, as long as they are for official purposes, and only after an examination of the property taken as security. But, according to the Lord of Idzumo, there has come about great laxity [in the placing of the loans], and persons are taken as borrowers who have scarcely more resources than their daily earnings; so that the enforcement of the loans has naturally become more difficult, and the arrearage has constantly increased. It is said, too, that the more indiscriminately this lending has proceeded, the more careless the loan-officials have become about their duty of collecting them. For this reason some additional measure must be adopted, in order to prevent this looseness, or else the constant lending will result in serious losses, which might cause considerable annoyance to you.[1]

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1. "This is the most responsible office, and too often in times

A similar statement has already been made by Matsudaira, Lord of Idzu,[1] in what he has written on "The Mode of Making the Loans of the Three Temples of Kumano." Since then, it has recently been ordered that (as requested by the above memorial [of the Lord of Idzumo]) these loans should be treated differently and according to the old practice, it would be reasonable that we should proceed to facilitate the more speedy payment of the claims. Still, we must, with the object of attaining this reform, not suddenly put into force severe measures. It seems best, on the whole, to follow the old practice, granting to the Court the power to proceed at its discretion where the circumstances of a particular case make it impossible to overlook [the debtor's conduct]. In addition to the foregoing, it is hard to say, in many cases whether we are to conclude that the debtors are to blame for not paying when they can, or whether the fault does not lie in the original placing of the loans, without due inquiry, [with penniless borrowers]. We therefore respectfully propose that you instruct the Lord of Idzumo to order the loan-officials of the Lord of Kii to be more careful in placing their loans, in view of the large amount of arrears due outstanding.

As no agreement could be reached, on consultation with the Town Magistrates and Finance Magistrates, we have herein set forth our own opinion in the above document.

Year of the Serpent."

4. *Opinion on the same subject from the Town Magistrates.*

a. "Private statement of opinion regarding the loans

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past has entailed upon its possessors the mistaken duty of retrieving an error by the cowardly retreat of suicide. They are responsible for the whole acts of government, which are supposed either to have originated with them or to have been carried out with their cognizance." Dickson's *Japan*, a passage describing the Council of State.

1. This paper is not here given.

No. 33] while, as we acknowledge with gratitude, your gracious favor has effected such a reform in regard to all other claims, even Government loans, that the military gentry and even the townspeople who owe large sums have experienced a lightening of their burden. If what we have said is right, and still the Temple Magistrates are permitted to adopt whatever severe measures they please—measures intensely distasteful to hundreds of the common people—,there would be no opportunity of effecting a quiet and gradual settlement of these claims; [the penalties proposed by them would follow without delay], numbers of debtors would crowd the prisons, many to die there in misery, and serious discontent would be excited among the populace. These consequences, we venture to think, would be far from according with your gracious intentions. We trust, therefore, that you will be pleased to establish some unexceptionable method of lending money, which both the gentry and the common people will understand and in which they will place full trust; for although we do not know exactly what influences are behind the class of loans now in question, we cannot, in view of the reports already alluded to, help entertaining some suspicions. The matter may perhaps be regarded as of lesser consequence, for these claims are of the nature of ordinary money claims.[1] But our decision in this case will be taken as a precedent for the future; furthermore, the exceptional treatment of the loans of the Lord of Kii, in spite of the recent reform (which has more or less affected the funds of every royal abbot), might give rise to rumors that the Government makes distinctions between near and distant relations,[2] which

1. Which were always regarded as inferior in importance to controversies about land. Compare *hon-kuji*, principal actions, the term applied to the latter. 2. The *Go-san-ke*, or Three Families, were the descendants of the youngest three sons of Iyeyasu, and from them a successor was chosen, in case of a vacancy, to fill the seat of the Shogun. To one belonged the lordship of Owari, to the second, Mito, and to the third (the one here concerned), Kii.

would affect injuriously the name of the Palace Families,[1] and, in the end, would stain even the honor of the Shogun himself. Such consequences are deeply to be dreaded,[2] and we cannot but express to you our apprehensions. A general outline of the view set forth above has already been communicated to you orally by the Minister of Public Works in the 3rd month of this year. But as the matter was one with which the Temple Magistrates are specially concerned, a consultation was had with them. It was subsequently to this that Kuze, Lord of Idzumo, presented a memorial asking privately your will in regard to the treatment of these loans, and this was referred [to the Chamber] for deliberation. This session of the Chamber has not yet taken place, and arrangements are being made for it. Meanwhile, the above views have been communicated to the Warden of the Palace Gates, who has expressed his accord with them. We therefore herewith forward them, in our joint names. We trust that, when the matter comes up at the Full Session (which will be before long,) you will be pleased to lay the above statement before the Chamber, as you have the right to do.[4]

We thus venture, in spite of our awkwardness in these things, to set forth our crude views in writing, and respectfully lay them before you.

Year of the Serpent,
4th month.
Toyama, Warden of the Palace Gates.
Nabeshima, Minister of Public Works."

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1. *Dojo-kata-shoke* (lit., families in the Hall); the noble families related to the Shogun. 2. This is worth noticing, as indicating a standard of legal consistency and impartiality not by any means a matter of course under a feudal regime. 3. By the Minister of Public Works, who evidently drafted the document. 4. This sentence may mean a request to the Councillor to adopt these views and present them with his sanction.

No. 35. *b. Letter to one of the Town Magistrates from his Trial Bureau.*[1]

"We have looked over the Opinion presented by the Finance Magistrates[2] and also the Opinion of the Temple Magistrates.[3] We think that the arguments of the latter are drawn from the Memorial of the Lord of Idzumo,[4] and are not sound; and that the Opinion of the Finance Magistrates is the better one. It differs somewhat, however, from the one recently presented [by you]. Will you, therefore, [sign that Opinion of the Finance Magistrates, or will you] consult with the Minister of Public Works and draw up a separate Opinion?

Year of the Dragon,
8th month.
The Trial Bureau."

c. Rubric, appended to the above by the Trial Bureau.[5]

"We have been directed by you to draw up the Communication [of assent] about which we inquired above, and we herewith enclose a draft thereof.

Enclosure. 'We have received your letter.[6] We are in accord with the views expressed in the Opinion of the Finance Magistrates, and we shall therefore append our names to it jointly.

Year of the Serpent,
8th month.
The Town Magistrates.

To the Lord of Ise.'"[7]

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1. The preceding Opinion was presented in the 4th month. In the meantime those of the Finance and Temple Magistrates were presented (2 and 3. *supra*). The Trial Bureau now asks a question of one of the Town Magistrates. 2. *Supra*, the second document. 3. *Supra*, the third document. 4. *Supra*, the first document. 5. The Town Magistrate has consulted with his colleague, and they now decide to sign their names to the Opinion of the Finance Magistrates. 6. Some letter from the presiding Councillor asking an expression of opinion. 7. The presiding Councillor.

d. Report to the Town Magistrates as to popular rumors regarding the loans in question.[1]

"It has been said, with reference to the loans of the Three Temples of Kumano, which are managed at the residence of the Lord of Kii in Tsukiji, [Yedo], and the privy-fund loans, which are managed at his treasury-office in Hama ward, that, though orders have been issued to treat these loans according to the old practice, the debtors continue to disregard their obligations; and, as you have inquired of us as to the popular opinion on the subject, we herewith lay before you the result of our investigations.

(1.) The loan-fund of the Three Temples of Kumano.

This originated among the numerous townspeople who have come here from the fief of the Lord of Kii, and have been entrusted by the Lord of Kii with his remittance[2] transactions, the chief one concerned being a certain Shoji Shinjiro, a Government-merchant.[3] This person, who is now in the service of the Lord of Kii, was employed while a Government-merchant, in inspecting and superintending the annual immigration hither from the fief of Kii, and was known as a "travelling-headman."[4] At that time he established, in the interest of these immigrants, a common-lottery-club, known as the "Kumano Temple Relief Lottery Club,"[5] the affairs of which were managed chiefly by Tokuyemon, a house owner of Tokuyemon ward, Honjo [district,] and Goroyemon, a house-owner of Horikawa ward, Fukagawa [district]. The methods of this lottery

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1. Referred to in *a, supra*. 2. *Kawase;* that is, all transactions in which bills of exchange would be required,—the collection of the lord's income from his province, the sale of rice and other products, etc. 3. See No. 5, *ante*. 4. *Tabi-shoya*. This may mean that his office required him to go about the country; or that he was headman to manage the affars of travellers. The former is more probable. 5. *Kumano sanzan O-teate-soyeki-ko.*

No. 33. club are as follows. A single share[1] costs 60 *ryo* [annually] and this amount is to be paid in four times a year. The full term (known as "final-meeting"[2]) is 10 years; so that at the end of the 10 years the whole investment amounts to 600 *ryo*. Each one of these immigrants is to take[3] one or more of these shares, according to his means, —perhaps one, perhaps five or six. These contributions accumulate from year to year, and, two full terms having now elapsed, the whole fund, principal and interest, amounts to some 256,000 *ryo*. This is the fund from which the loans in question are made.

(2). The mode of lending.

The principal borrowers are sundry families of the military gentry. When such a family wishes to get a loan, a special request is made, naming the amount desired. Suppose the amount is 1000 *ryo*. Now before the loan can be made, the family in question must enter the club, take 5 shares in it, and pay to the loan-office 75 *ryo* on account, as the first instalment of the amount due[4] on the 5 shares. Upon this 500 *ryo* of the 1000 asked for are loaned. Then another payment of 75 *ryo* is made as the second instalment of the price of the shares, and the remaining 500 *ryo* are then loaned. Thus the 1,000 *ryo* are received in two instalments. The interest is usually reckoned at 1 *bu* per month for 25 *ryo* or for 30 *ryo*.[6] The Lending Office at the same time owes an interest of 1 *bu* per 30 *ryo* on the price of the shares, which runs until the end of the full period. Payment of the loan may occur by the shareholder drawing a prize. Sometimes

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1. *Kuchi* (item, single thing). 2. *Man-kwai*; the meetings for payments and drawings occurred four times a month, and the last meeting (*mankwai*) signalized the ending of the term. 3. *Hiki-ukeru*; undertake, that is, subscribe to. 4. *Kake-kin*. 5. Each share was worth 60 *ryo*, or 15 *ryo* four times a year; hence 5 shares would require a quarterly payment of 75 *ryo*. 6. That is, 12 per cent, or 10 per cent.

the term of the loan may be extended, if the original agreement provides for this, and in such a case the instrument is renewed. But every borrower has to pay, besides the interest on the loan, the price of the shares, instalments of which are due four times a year. These payments, it is said, tend to consume the resources of the borrower applicable to the discharge of the loan, and naturally there is likely to be a default on the loan. Moreover it is proper to say that the families of the gentry whose affairs are in good condition would not contract loans in the above manner, and the borrowers are usually those families whose resources are so doubtful that no capitalist among the townspeople will lend to them and who are thus obliged to resort to the Lending-Office. Thus the loan is one which at its very inception is likely to fall into arrear.

(3.) The term of the instrument.

The instrument is made out as if a retainer of the house were the real borrower; and it is also stated on the face that the payment of the loan is to be undertaken by some townsman frequenting[1] the mansion, and shall be effected by them if the family itself defaults. But these townmen, though they frequent these mansions, are really without means, and only a few are so circumstanced as to be able to raise such sums. They append their seals against their will and only because they have long frequented the mansion and must continue to do so in order to retain the business advantages connected therewith. Thus, it is said, these townsmen naturally do not care to answer the summons of the Lending Office to pay.

(4.) As to the management of the Three-Temples fund.

The retainers of the Lord of Kii who had been particularly concerned in it have recently withdrawn, and their places have been taken by certain persons, [local] officials

1. *Tachi-iri*; the same as *deiri*.

No. 22. of the province, but now resident in Yedo. The affairs are chiefly in their hands; and while they, with a few of the townsmen frequenting the mansion, viz., Shichiemon, a house owner of Block No. 1, Bakuro ward, and 2 others, are to be found at the Lending-Office, attending to the payment of the loans. But quite lately the above resident officials, not leaving the matter to these townsmen, are themselves making their demands for payment on the borrowing families. The latter are much put out by these [urgent demands], especially as they have [the additional] burden of the [lottery shares, which they were obliged to take in order to borrow the money. Thus, it is said, the retainers of the borrowing families do not care to have the noble lord of Kii report the matter to the Magistrate, because the family owes the price of shares in the lottery and also the loan itself, which was deliberately incurred. The townsmen, too, who undertake payment of the debt and affix their formal seals to the instrument, are being persistently dunned by the lenders; and when they request the lord's officials to pay off the loan, the latter continue as before to delay payment, for the reasons above stated. Those who are in the end the sufferers are thus the townsmen who guaranteed the loan, and [their lack of means] makes it unlikely that payment can be got out of them.

Such are the reports in regard to that fund.

(5.) The loans from the privy-fund.

This fund was established chiefly through the efforts of one of the townsmen frequenting the mansion, one Toyota Kyuyemon, a house owner of Block No. 3, Mita, and the transactions take place at the Treasury of the Lord of Kii, in the Hama ward, under the management of his retainer. The mode of lending the privy-fund cannot be exactly learned. But it is said that the townsmen frequenting the mansions of various families of the gentry found that, in order to preserve the privileges they enjoyed, they must

furnish additional sums over and above their existing loans, many of which were in arrear. They therefore promised the vassals of the various mansions to place out at interest for them the privy-funds. But in fact they themselve become the obligors to the vassals, and lent out their own money on instruments purporting to be for loans of the privy-fund. Where the loan is a large one, the instrument is retained by the real lender; but where the amount is small, the real lender receives from the Lending-Office [which retains the principal instrument,] a memorandum of the loan. The interest on these loans is 1 *bu* per month for 25 *ryo*,[1] while the lender pays the noble lord 10 per cent. At the close of each year, the real lender must pay the 10 per cent on their loans, even though both principal and interest are in arrear. The townsmen in question are Tsutsumi Yasaburo, householder, of Block No. 3, Mita, and 13 others, of the investment-furnishing merchants.[2] Besides these persons, who frequent the mansions of various families of the gentry and negotiate loans in the above manner, there is one Chosaku, a son of Go-yemon, of the Maru House, who has even lent sums of money to eating-houses and to the tea-houses attached to the theatres in the Sarugaku ward, under the names of loans from the above Office; and loans have been made to other townspeople in the same way. But it is now rumored about that in all these cases the loans are not in fact the Lord of Kii's, but those of certain private persons, money-lenders, and the debtors, gentry as well as townspeople, have become discontented and decline to pay, in spite of

1. 12 per cent. But the creditors must in reality have obtained much higher interest; for first, the profit would have been too small; second, the legal rate was 15 per cent, from 1790 to 1842; and, third, usury was undoubtedly practised.
2. *O-shiire-kata yotatsu;* those who assist the officials in buying or investing, presumably by lending money.

No. 33] the orders issued by the Temple Magistrate at the request of the noble lord.

Such are the rumors about the privy-fund. We privately report to you as above.

The headman charged with keeping
order in the town."[1]

5. *Draft of a Town Proclamation by the Temple Magistrate on the above subject.*

"Draft of a Town-Proclamation.

Loans from the fund of the Three Temples of Kumano have been regarded too lightly by the debtors, since the order of Bunsei, XII (Ox.)[2] Moreover, it is said that some of them erroneously consider that their obligations are covered by the Order of the last Hare year (1843) for [the private settlement of] money actions. But as it has now been ordered that these loans shall in all cases be treated 'differently [from ordinary debts],' orders are issued to the headman in charge of proclamations[3] to make it clear to all the people of the city the real intention [of the Government] as to the true nature of the above release from debt, and to order them to pay [the present class of claims] without fail.

Year of the Horse,
Intercalary 5th month."[4]

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1. *Shi-chu tori-shimari nanushi.* 2. This does not appear. 3. *Ko-guchi nen-ban nanushi.* For these officers and their functions, see Part I. *Nenban* signifies yearly rotation in office. 4. This Proclamation is somewhat difficult to explain. It was probably never issued, for it is termed a draft or proposal. Yet it is dated in the year succeeding that in which the preceding documents were written. It is, however, entirely improbable that the decision arrived at in 2, *supra*, was changed.

[No 34.] *Disposition of an Action on a Money-Loan against one of the Military Gentry, the Defendant having Absconded pending Trial.*[1]

1. *Letter of Consultation.*[2]

"Kayei, VI, Ox (1858).

A money-loan action was brought in the last Rat year (1852) by a certain Kazeichi, tenant of the shop of Takichi, in Kodemma, Upper-Block, against Maroshima Uchizo, a retainer of Sakai, Lord of Uta. But the said Uchizo absconded while the complaint was in the course of service upon him. Upon searching for precedents it appeared that in the last Ape year (1848) a similar case had come before our colleagues of the other Department, where also the defendant had absconded while the complaint was in the course of being served upon him. In that case they had not been able to discover any precedent and had inquired of us; whereupon we, after inquiring of the Bureau of Complaints, had answered that although no precedent could be found, we thought that they should order a search[3] for the absconder, summoning the plaintiff for that purpose and making the necessary order, or that, if the plaintiff should ask leave to withdraw, it should be granted and no search ordered. Upon discovering their record of this answer, we inquired of our colleagues in the other Department what measures they had actually taken in that case; they replied that as payment of the claim had been undertaken and performed by a fellow-retainer of the defendant, the plaintiff had asked leave to withdraw, and so no order of search had been made. In the present case, however, it appears that no such undertaking has been made

1. Cited from "*Shoji-dome.*" 2. This letter is from (probably) the Trial Bureau of one Town Magistrate's Office to that of the other, though which Office originates or which receives cannot be told. 3. *Tazune.*

No. 34. by a fellow-retainer, and that before action brought the joint sealers of the instrument had also absconded, and no means of payment exists; so that, although there is no precedent, we think that we should order the fellow-vassals to cause a search to be made, and make an order to the plaintiff accordingly,[1] or, if the plaintiff asks leave to withdraw, declaring his intention to enter the action again whenever the defendant may be discovered, we should grant the leave and order no search. In order to avoid non-uniformity of practice, we beg to bring the matter before you, inclosing the documents above-mentioned, and trust that you will express your opinion freely.

Nakada Goyemon.

Year of the Ox, 4, 6 (May 13, 1853).

To

Tojo Hachidayu, Esq.,[2] *Approved.*[3]
Nakamura Jirokichi, Esq., *Approved.*
Tojo Hachitaro, Esq., *Approved.*
Hara Jinzayemon, Esq., *Approved.*
Ando Gengozayemon, Esq., *Approved.*
Inazawa Yoichibei, Esq., *Approved.*"

Rubric. "The above proposition having been agreed to, we on the same day reported it [to our chief] by Takeji,[4] and on the 13th day of the month ordered Marushima Toda, father and fellow-retainer of Ushizo, [the defendant], to search for [and procure the defendant], within a certain period. But after some negotiations

1. This order seems not to have directed the plaintiff to take part in the burden of the pursuit, but merely (as in the Bankruptcy Order of the Resolution, *ante*, No. 28, 6. par. 5.) to have notified the plaintiff of the measures taken and to have satisfied the Japanese idea of obtaining the acknowledgment of each judicial act by all parties, even those benefited thereby. 2. There seems to have been some change of position, for in No. 28, 7, *c*, *ante*, two of these officers are in different Bureaus. 3. Signed by each after his name. 4. Apparently a messenger's name.

between the parties, the said Toda paid to the plaintiff 2 *bu*, a part of the money borrowed privately[1] by Ushizo, and as to the remainder it was agreed that the plaintiff might enter the action again whenever the defendant shall have been found; and in accordance with this agreement the plaintiff has asked leave to withdraw, which has been granted."

2. *Reply to an Inquiry.*[2]

"To

Tojo Hachidayu, Esq.,[3]
Nakamura Jirohachi, Esq.,
Nakada Goyemon, Esq.

From

Nakajima Kayemon.
Akiyama Kinzo.

We have examined your letter, and congratulate you on being in good health and zealous in the discharge of your duties. We made inquiry of you recently in regard to a money-loan action brought against a retainer of a lord in the last Ape year (1848), where the defendant had absconded while the complaint was in the course of being served, and desired to know whether there was any precedent for odering a search for the defendant. You then replied that, though in your Department also no precedent existed, you were of opinion that an order for search should first be made and the plaintiff should then be summoned and notified of it, or if the plaintiff should ask leave to withdraw, that the leave should be granted and no order of search made. You now inquire what measures we did in fact take in that case. In reply we beg to say

1. *Taidan-kin.* 2. This is the document referred to in the preceding Inquiry as the reply by the other Department in answer to an Inquiry as to how the precedent cited had been in fact disposed of. 3. This officer was at this time not in the same office in which he appears later in the document first given.

No. 34. that the suit was between Matsuyama, master-blindman of the first degree,[1] tenant of the shop of Rinzo, Saruga ward Asakusa, and Hashimoto Zennosuke, retainer of Satake Jiro, and one other, as defendants; and that, while the complaint was in the course of service, the defendants absconded. But as a fellow-retainer of the defendant undertook to pay and did pay the claim, and the plaintiff then asked leave to withdraw, we did not make any order of search.

3d month, 30th day."

No. 35. *Payment of a Money-Loan where both Principal and Surety are Deceased.*[2]

"When both principal and surety are deceased, and an action is brought against the successor[3] of either, then if the successor has received from his ancestor any ricefield or upland or any family belongings, he must deliver it to the creditor. But on the other hand, if all the ricefield and upland, as well as the family belongings and even the house and residence-land, of the ancestor has already been given as security, either in pledge or in hypothec, to any person other than the plaintiff, and the successor has inherited only the name of the ancestor, then of course the successor need not undertake payment. In such a case, therefore, both principal and surety being deceased, it must not be forgotten by the Court trying the case that payment cannot be enforced from the successor.[4]"

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1. *Ken gyo.* 2. Cited from "*Daibun sosho.*" No date appended. 3. *Ato-kabu.* 4. This may be a Resolution of the Chamber of Decisions. It seems to have been a very late one, for the whole policy in legislation up to the Tempo period involved the ranking of hypothecs as no better than ordinary loans.

[No. 36] *Payment of the Ancestor's Book Debt by a Successor.*

Note Appended to an Inquiry.[1]

"In regard to your inquiry, I think that, where a creditor sues the successor for payment of a deceased person's debts, you ought to order payment, provided the account-book [of the creditor] is sealed [at the entry] by the debtor, one seal[2] alone being enough, and provided the successor does not dispute the genuineness of the seal.

Year of the Ox, 11th month."

[No. 37.] *Money Actions where both Principal Debtor and Surety have been Succeeded in the Family-mastership.*[3]

"Though the principal debtor and the surety are both deceased, yet if an action is brought against their sons who have succeeded to the family-mastership, these ought to undertake payment, provided there is no doubt as to the genuineness of the [debtor's and surety's] seals. The Court shall keep this in mind; and if during a trial the debtor dies or absconds, the Court has dismissed the cause, explaining the reason to the plaintiff, yet afterward he again enters the action against the son of the surety, alleging that he has no other means of obtaining payment, the Court shall take cognizance of the action and try it. But the principle must then be kept in mind that payment is to be ordered if the instrument of debt contains an express

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1. No year-period appears. Cited from "*Kwanyo-ki.*" It is probably an answer by one Magistrate to another. 2. The debtor's. For this form of debt, see cases in Part III, Section II. 3. Cited from "*Kosai-jimmon-shu.*" No date appears. The document is probably a Resolution of the Chamber.

No. 33] stipulation that "If any thing happens to the principal, the surety shall undertake payment;" and that if there be no such express stipulation, payment shall not be ordered, or else the Court shall consult [the Full Chamber]."[1]

[No. 38] *Money Actions against Persons Sentenced to Punishment.*[2]

"Although the rule is that, if a debtor absconds, not having committed any crime, an action may be maintained for a money-claim against the successor to his estate and payment is to be ordered; yet if the debtor has committed a crime and is deprived of his ricefield and upland, family belongings, house and residence-land, and exiled from the locality or sentenced to any graver punishment, no action may be maintained or payment ordered against the surety, etc.; and the Court shall in the trial of the case either apply this principle without more ado or consult [the Full Chamber.]"

[No. 39] *Actions upon Money Loans to Adopted Sons.*

"Where an adopted son borrows money and afterwards absconds, and the creditor sues the adoptive father,[3] the

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1. It must be remembered that the term rendered "surety" is *shonin*, which also and originally means "witness," and that in some regions the *shonin* was regarded as a surety, in others as a witness only (see Part II, Chap. II). Hence it was reasonable to require that the distinctive character of the *shonin* as a surety be shown by some express statement in the instrument; if none such existed, then, it may be assumed, the sanction of the Chamber was necessary in order that other evidence might suffice. 2. Cited from "*Bandai-sho*." No date appears. 3. *Yoshi*.

latter is bound to undertake payment, if the adopted son had already succeeded to the family mastership when he incurred the debt; but if he had not yet succeeded and was still under the control of the parent,[1] then, as the debt was contracted privately,[2] no order of payment shall be made [against the father], in case of the son's death; and in case of his absconding, an order should be made for suspending proceedings until discovery [of the fugitive]. This is the principle to be applied in actions of the above sort."

[No. 40] *Money Actions against a Temple-Incumbent on debts of his Predecessor.*[3]

A Reply to an Inquiry made of
Itakura, Lord of Suwo.

"In regard to your Inquiry, I will reply that if it is plain, on an examination of the instrument of loan, that the money was borrowed for the use of the temple, no further deliberation is necessary [and payment should be ordered]. It is true that the Shingon sect have a rule that no succeeding incumbent should be held liable for the money obligations of his predecessor. But as this is a special rule made by the sect itself, it should not be followed in actions between members of that sect and any other, and the successor should be held liable."

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1. *Oya-gakari.* 2. *Aitai.* This is a new example of the idea involved in *aitai.* Comparing this passage and those in which *aitai* indicates transactions not witnessed by local officials, we may perhaps generalize and translate *aitai* "without special authority or sanction." 3. Cited from "*Chiho-kosai-roku.*" No date appears; but Itakura was Temple Magistrate about 1860.

No. 41. [No. 41] *Payment of Money Loans incurred by a preceding Temple-Incumbent.*[1]

"(1.) If the incumbent succeeded to the benefice without knowing of any claims against his predecessor and also without being informed the reof by the proclamation-chief of the temple, then he is not bound to pay, and payment is to be made by the disciples of the predecessor, or by his surety. This is an old custom.

(2.) If money is borrowed by a temple on hypothec on deed of sale of its miscellaneous articles,[2] Buddha-utensils,[3] fixtures, etc., and the debt is in arrear, the person contracting the loan and his surety shall be punished, and no order of payment shall be made.[4]

(3.) Although an incumbent declares that he was not aware [upon his accession to the benefice] of any claims against the predecessor, still, if he had not [at the time] declared that he would not enter upon it if there were any claims outstanding against the predecessor, he and [his] surety will be liable."

[No. 42] *Refusal to pay by a Debtor taking advantage of some fault on the part of the Creditor.*[5]

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1. Cited from "*Chiho bunshu.*" No date appears. 2. *Jumotsu.* 3. *Butsu-gu*,—the censers, candlesticks, etc. 4. This rule corresponds with that laid down in a passage of the *Kujikata Osadamegaki* (Rudorff, *Tokugawa Gesetzsammlung*, p. 55), dated Gembun. III. 4 (May. 1738). Probably the above document is a mere repetition of the *Osadamegaki*. 5. Cited from "*Shojidome.*" No date appears, but the magistrates' names indicate it approximately as of the Tempo period (1830-1843).

An Inquiry made by Naito, Captain of the Imperial Body-Guard,[1] to Tsutsui, Lord of Iga.[2]

1. *Inquiry.*

"To Tsutsui, Lord of Iga,
from Naito, Captain of the Imperial
Body-Guard.

I beg to inquire whether there is [in your Office] any precedent applicable to the following case: A borrows money of B, and, though often requested to pay, fails to do so; at last, taking advantage of some fault[3] on B's part, A notifies B that he will not pay.

5th month, 14th day."

2. *Answer.*

"In regard to your letter, inquiring as to the case where a debtor takes advantage of some fault on the part of the creditor and refuses to pay, I will reply that, although the case may differ according as the fault is more or less serious, yet if it is so inconsiderable that it may be excused upon apology made, then the creditor should be ordered to make apology to the debtor, and the latter should be ordered to pay the debt; or, if a private settlement has been made, it should be sanctioned. Such is my opinion, though after careful search I can find no precedent applicable to the case. I enclose, however, a case which I found; though after all you may not consider it worth notice.

Year of the Tiger,[4] 5th month.

Tsutsui, Lord of Iga."

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1. Finance Magistrate. 2. Town Magistrate. 3. The answer shows that the "fault" consisted in an injury or insult of some sort to the debtor. 4. In the Tempo period the Tiger years were 1830 and 1842; the document probably belongs to one of these two years.

No. 42. 8. *Precedent enclosed in the Answer.*

"Temmei, IV, Dragon (1784).
Before Makino, Lord of Osumi.
In the case of Joyemon, tenant of the shop of Yabei,
Fukagawa Ward, Sangen Block [Yedo].

The above person some years ago made an advance [1] to Sano, Chief of Imperial Magazines, Attendant of the Shogun's Court, for his household expenses, and had at the same time paid 300 *ryo* as character-security money.[2] The repayment of the latter sum having been delayed, the said Joyemon brought an action for it, in the last year of the Ox (1781). An amicable agreement [3] was reached, the debtor paying 50 *ryo* down, and promising, in settlement of the remaining 250 *ryo*, to send yearly instalments of rice,—300 bales [4] in the year of the Tiger (1782), two years ago, 300 bales in the year of the Hare (1783), last year, and 150 bales in the present Dragon year; and the debtor made out and delivered an instrument undertaking as above. Upon this private settlement [5] being made, the plaintiff in the aforesaid Tiger year (1782), asked leave to withdraw, which was granted. But in the last Hare year, 10th month (1783), an action was again brought by the plaintiff, alleging that the rice-instalments of the first two years had not been paid. An attendant [6] was sent by the Court to direct an amicable agreement. But meanwhile, on examination, the Court learned that the market-price of rice was low when the contract for the payment of the 250 *ryo* in rice-instalments was made, and that since then it had risen, so that at the time [of bringing the second action] the delivery

1. *Shiokuri-kin.* 2. *Mimoto-shoko-kin.* See No. 28, 2. The connection of these two transactions is not clear. But apparently Joyemon had entered into some relation of confidence with the feudatory and had therefore given security-money. 3. *Jukudan.* 4. *Hyo;* one *hyo* contained usually 3½ *to*, but varied according to the custom of the region. 5. *Naisai.* 6. *Soye-tsukui.*

of 300 bales, that is, one year's instalment, would be sufficient to repay the 300 *ryo*. This being the case, it was clear that, although the first two instalments were due and unpaid, the terms of the instalment-provision had become unreasonable, and that to order payment strictly according to the terms of the agreement would give the creditor an excessive advantage. The Court therefore ordered that, since it would be improper to enforce the agreement strictly according to its terms (although otherwise if the suit had been brought after the price of rice had again declined), the plaintiff should arrange with the defendant and substitute an instrument promising payment in money instalments, and then bring suit again [if payment were not made]; or else should wait for a fall in the price of rice.[1] But in spite of the exhortations of the Court to this effect, the plaintiff considered only his own gain, was obstinate, and acted unconscionably, to such a degree that the Court was obliged to order him to prison. But he is now repenting his misconduct and wishes to be pardoned, and declares that he has consulted with Adachi Kwanyemon, a retainer of the defendant, the Chief of Magazines, and that he desires to substitute a money-instalment instrument, and asks leave to withdraw his complaint. Nevertheless he is censured by the Court, for so regarding his own gain only, in spite of the attempts of the Court to convince him that it was reasonable to make the above substitution by private arrangement with the defendant.

In the above action the parties after consultation made a private settlement and asked for leave to withdraw, which was granted."

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1. It may be thought singular that the debt was not reduced to a number of bales of rice just equivalent at the ruling prices to 250 *ryo*. But the payment was to be made by instalments and this expedient would only have left opportunities for further uncertainty in the future.

No. 43] [No. 43.] *Payment of Money Claims against a deceased Adopted Son.*

A Petition by Kato Sezayamon, retainer of Abe, Lord of Noto.[1]

1. *Petition.*

"I had a second-son, whom I sent in adoption to a resident of another fief; and after succeeding to the family-mastership there, he fell ill and died, his last request being that a suitable son-in law be adopted and married to his daughter; and a son-in law was thus adopted and made family-master, with the sanction of the lord of the fief. Now this second-son of mine had during the time that he was family-master incurred a number of debts in the shape of loans and unpaid purchase-money for which his creditors have demanded payment of me, his natural parent.[2] But I for my part have not known any thing of these claims, and it seems to me unreasonable that a natural parent should have to undertake payment of the debts of a second-son incurred during his mastership of the family of his adopted father, and, furthermore, that as the above-mentioned adopted son of my son (youthful though he is) has succeeded to the family name, he, and not the deceased man's natural father, is liable for these debts. The purpose of my letter is to ask in private an expression of your opinion as a guide for future action.

Year of the Boar, 9th month.

Kato Sezayemon."

2. *Answer.*

"In regard to your letter I will reply that a natural father ought not to be liable for loans or goods sold on credit to a second-son during the latter's mastership in another

1. Addressed probably to one of the Magistrates. 2. *Jitsu-kata-oya.*

family; and moreover, that as long as an adopted son (youthful though he is) of that second-son has succeeded to the family-name, and is still family master, the natural father certainly ought not to be held liable, unless there is some special reason, because the debts of a family attach to the family-name."

[No. 44]. *Proceedings where in Actions against Military Gentry the Defendant's Lord changes.*[1]

An Inquiry made by Itakura, Lord of Suwo,[2] to the Town Magistrates of Yedo, Ishiya, Lord of Inaba, and Kurokawa, Lord of Bichu.

Dated Bunkyu, I (Cock), 10 (November, 1861).[3]

1. *Inquiry.*

"A money action was lately brought by Toyoka, master-blindman of the first degree, ground-renter of Hokuden Kotaro, against the retainers of Matsudaira, Lord of Totomi,[4] for the recovery of arrears due on loans made for their lord's household expenses. But while the trial was pending, a change of incumbents[5] took place, Yoshichiro being ordered [by the Shogun] to succeed to the estate.[6] This being the case the retainers of Yoshichiro asked to have the

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1. *Dai-kawari*, lit., generation-change. In actions against the higher nobles a retainer was usually made defendant; hence a change of lords caused by death and the succession of the heir, meant in fact a change in the person of the real defendant. 2. Temple Magistrate. 3. No date appears. But the only years when these two Magistrates were in office together were Bunkyu I and a portion of Bunkyu II, (1861-2), and 1861 was the year of the Cock. 4. Really a claim against the lord himself. 5. *Dai-kawari*. 6. The Shogun's order was in effect a nominal proceeding only, the *daimyo* doing very much as he pleased under most circumstances.

No. 44] action suspended, in the manner ordinarily followed (they say) by you in temporarily suspending actions [under similar circumstances]. I wish to learn whether it is true that you are accustomed to order a temporary suspension in all cases of succession.

Year of the Cock,
10th month."

2. *Answer.*

"In regard to your letter we have to reply that, in the actions brought in our Court by certain townspeople against the retainers of the Lord of Totomi, we have ordered that, inasmuch as a succession has occurred, the action shall be dismissed, but it may be re-entered [against the same defendants, as under a new lord] whenever the plaintiff wishes. It has long been our custom to dismiss actions temporarily in such cases.

Year of the Cock,
10th month.

Ishiya, Lord of Inaba;
Kurokawa, Lord of Bichu."

[No. 45] *Loans from the Reserve-Fund*[1] *set aside for the use of the Time-keeping Attendants*[2] *in the West Palace.*[3]

An Inquiry made by Furukawa, Lord of Yamashiro,[4] and Muragaki, Lord of Awaji,[4] of Iwase,

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1. *Tsumitate-kin.* 2. *O-taiko-kata no bōzu*, lit., priests of the drum-department. They were called "priests" because their heads were shaven. Drums were used for marking the hours; hence the "drum-department" was the name given to the time-keepers. 3. *Nishimaru;* the part just inside and above the Sakurada Gate. See McClatchie, in Trans. Asiat. Soc. Jap., VI, 119. 4. Then Finance Magistrate.

Lord of Iyo,[1] and Sakakibara, Minister of the Imperial Revenues.[1]

Dated Bunsei, II (Hare), 10 (December, 1819).[2]

1. *Consultation.*

To Iwase, Lord of Iyo;
Sakakibara, Minister of Imperial Revenues,
from Furukawa, Lord of Yamashiro;
Muragaki, Lord of Awaji.

The whole body of Attendants at the Western Palace have long been accustomed, by mutual agreement, to set aside a small portion of their salaries,[3] [for the use of the Timekeepers] and to lend an interest from this fund from time to time to such persons as the rice-brokers,[4] the object being to defray the expenses incurred by the Timekeepers in their occupation, for the Timekeeping Attendants of the Palace are not able to maintain their positions without some such aid. [The interest on] some of these loans is now in arrear; but the Magistrates are unable to enforce payment, because the loan was made without proper sanction.[5] Recently the Attendants requested to be allowed to have the loan regarded as re-made and to receive sanction for that purpose; but the only answer was that this would offer a bad example, and that sanction could not be given. A petition was thereupon made by the Chief of

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1. Then Town Magistrate. 2. Cited from "*Shoji-dome.*" No date appears; but this was the only Hare year when all these were in office together. 3. *Kirimai-kin.* 4. *Fuda-sashi.* 5. The reference is to the rule that no *samurai* should engage in any occupation for gain. *Samurai* might make deposits for safe-keeping, but not loan upon interest. The creditors in this case might perhaps have been punished for their violation of law by a forfeiture of the whole sum lent. But there does not seem in fact to have been any real question as to their recovering their principal. The doubt was as to their recovering interest.

No. 45] Attendants, alleging that the Timekeepers would not be able to maintain their position if deprived of the profit of their fund, and begging that the amount due or to become due [on the loans already made] might be graciously sanctioned by the Shogun from time to time, so that their payment might be enforced by the proper Court. This petition was sent down to us by the Lord of Suruga,[1] with the oral message that as the Timekeepers would be placed in an embarrassing condition if they lost the profit of their fund, some means had better be found for preventing this, and he suggests the following method.

Let the interest on these deposits,[2] when it is paid, be yearly deposited with the Chief of Attendants; and meanwhile let the Town Magistrates, upon application by the Chief of Attendants, make a special order for payment, so as not to treat the cases like ordinary money-actions; furthermore, although these deposits have not been sanctioned, yet as they have been made out of a fund established by saving and setting aside portions of the Attendants' salaries in order to enable their fellow-attendants to maintain their position, it would be desirable, if possible, for you to make a special order to the depositaries containing a general instruction on the subject], and commanding payment on application of the Chief of Attendants, so as to avoid the inconvenience of petitioning the Shogun on every occasion.[3] We therefore refer the matter to you and hope to have some answer to report to the Lord of Suruga.

Year of the Hare,
10th month."

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1. The presiding Councillor of State for the month. 2. "Deposits" bear no interest, and hence it would have been improper to apply the term "loan" to these, although the creditors had designed to get interest. 3. Evidently the Shogun had already given sanction to some extent.

2. *Memorandum by the Lord of Iyo.*[1]

"(1). The whole body of the Attendants at the Western Palace have long been accustomed, by mutual agreement, to set aside a fund and make loans from it [for the use of the Timekeepers], because these, unlike the others, cannot maintain their position without some such assistance. [The interest on] some of these loans being in arrear, the Chief of Attendants, in the last Tiger year, requested us to order payment; and we asked whether the loans had been sanctioned in the beginning, stating that otherwise we must regard the loans thus made from a fund composed of salary-savings as private[2] loans; of which the Town Magistrate could not enforce payment. Now in the communication recently made to us by the Finance Magistrates it is stated that the loans were to rice-brokers. If this be so, that matter must be disposed of by the Saruya ward Assembly-Office.[3]

(2) [Notwithstanding this,] we should, if ordered by the Shogun, proceed to enforce payment, on notice by the Chief of Attendants of a default in payment. But I do not believe that we can do so now, [without such an order,] merely upon application of the Chief of Attendants, even though an oral instruction has been given to that effect by the Lord of Suruga, and is approved by the Finance Magistrate.

Note, that I do not see any reason why we should not treat this transaction like an ordinary money-action, if an order to enforce payment is given by the Shogun; but a special order of payment must first be made.

Year of the Dragon,
1st month, 12th day."

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1. Probably laid before his colleague or a Private Session of the Town Magistrate's Court. 2. *Aitai.* 3. *Saruya-machi-kwaisho.* This was a Government office in the Asakusa district, Yedo, near the Government Rice-Storehouses, where loans were made at low interest by the Finance Bureau to the rice-brokers, who in turn lent to the *samurai.*

No. 45] 8. *Reply of the Town Magistrates.*

"To the Lord of Suruga:

Our opinion in regard to the treatment of the reserve-fund of the Timekeeping Attendants is as follows:

We have received for our consideration two documents; one, a memorial presented by the Chief of Attendants, in regard to enforcing payment of loans from the reserve-fund formed from salary-savings by mutual agreement of the Attendants, for the purpose of enabling the Timekeeping Attendants of the Western Palace to maintain their position; the other, a communication from the Finance Magistrates and their Trial Bureau, proposing that the Town Magistrates, Court[1] should adjudicate upon the above loans and enforce payment [of interest] from time to time; that in the future the Attendants should make no more loans privately, but should send [for permission] to the Town Magistrates' Office,[1] for example, have their moneys lent out to townspeople, and, on receiving interest, deposit it with the Chief Attendant; so that by this means the Timekeepers should obtain the assistance they need to maintain them. On due consideration we find that no instance has ever been known, except in the case of royal abbots and Buddhist and Shinto temples, where one of the gentry[2] has brought an action for money lent on interest. We except, indeed, also, the case of Matsudaira Tarozayemon, Councillor of the First Rank,[3] who

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1. *Bugyosho:* in some of its functions a Court, in others an administrative Office. 2. *Buke*, here used in its widest sense. 3. *Kotai yoriai*. Of the vassals of the Shogunate family, Mr. Rudorff says: "These fell into two great classes, the *hatamoto*, with incomes of between 300 and 10,000 *koku*, who again had their sub-vassals; and the *gokenin*, with incomes of less than 300 *koku*, usually running only with their feudal office. * * * The *hatamoto* were divided into *taishin* and *yoriai*, with incomes over 3,000 *koku*, and *omemitijo*, with incomes between 300 and 3,000 *koku*. The former class were known as *taishin* (great-income), if they were occupied in active of-

recently petitioned Makino, Lord of Bizen,[1] for permission to lend out his assistance-fund[2] for the purpose of obtaining money to improve and cultivate a piece of land, part of a benefice from the Shogun,[3] in Sanshu,[4] which was in pressing need of attention; but in this case, before any sanction had been given, it became known that certain of the retainers of the said Matsudaira had unlawfully lent out moneys,[5] and they were tried before my predecessor, Nagate, Lord of Bigo, convicted, reported to the Shogun, and punished. It is true that there are precedents where certain families have made deposits of their reserve-funds[6] with towns-people, and, upon notice of arrears and application [to Court], payment has been enforced. But these were cases of genuine deposits, bearing no interest of any kind, or, if interest was mentioned in the instrument, the Court enforced repayment of the principal only. Besides this consideration, it is not merely the Timekeeping Attendants whose circumstances place them in need of money, but every one whatever whose salary is scanty; and if those should be allowed to loan from their funds for the purpose of maintaining their position and get the Magistrates' Office to sanction[7] the loans, all the other lower *samurai*[8] whose salaries are scanty and whose necessities are pressing might

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ficial service; and *yoriai* (councillor), if they were invested with no real office, but only with an honorary title; in the latter case they were either *kotai* (alternate)-*yoriai* or *hira* (ordinary)-*yoriai*. (*Rechtspflege unter den Tokugawa*). In the *Hundred Laws* of Iyeyasu, the *kotai-yoriai* were ranked just above the Finance and Town Magistrates.

1. Then presiding Councillor. 2. *Teate-kin*. See p. 24, note 6. 3. *Go-shogo* (august title); probably of the above import. 4. Mikawa *kuni*. 5. Probably on their lord's account. Thus he first violated the law and then tried to get sanction when it was too late. 6. *Sonaye* (provision against loss)-*kin*. 7. This term may imply that the office also directed the placing of the loan. 8. *Gokenin; samurai* having under 300 *koku* income. See p. 170

No. 46] daira, Minister of Palace Supplies, lodged at the Nakura House, of Sakubei, in the post-town of Warabi. He was placed in the same room with another traveler, who was said to be of Omiya village and to have lodged once or twice before at Sakubei's. This fellow-lodger stole from Kosuke the following articles, which were wrapped in a yellow-green cloth and placed in a willow basket: 8 pieces[1] of white silk;[2] 1 piece of yellow silk;[3] 1 piece of white silk;[4] 8 small pieces of the same; 170 *momme* of white hemp; 1 *bu* of gold wrapped in paper; and 1 letter. No suspicion attached to any of the servants or members of the household; but Sakubei was sorry for Kosuke's plight, and gave him for his travelling expenses 2 *ryo* 1 *bu* in gold, which Kosuke accepted. We wish to know how to proceed in case the thief is apprehended and Kosuke sues for the recovery of his goods.

Ino Genpachiro, retainer of Matsudaira,
4th month. Minister of Palace Supplies."

2. *Appended Answer.*

"In regard to your inquiry, Yamaguchi Tetsugoro, Superintendent[5] of Warabi post-town, has reported that his officers brought news of a thief entering Sakubei's house and stealing articles belonging to a traveler lodging there, but stated that they were unable to discover him. The report being in due form, we have accepted it and have instructed the Superintendent to report as soon as the thief is caught. I understand that you make inquiry about the 2 *ryo* 1 *bu* in gold, which Kosuke received as a present from Sakubei. The sum being given by Sakubei out of kindness by way of assistance on account of the loss Kosuke had

1. *Hiki;* one *hiki* is 52 feet long. 2. *Neri-futo-ori;* a quality of silk. 3. *Ki-futo-ori.* 4. *Shira-kinu.* 5. *Shihai,* i.e. the *daikwan* or deputy.

suffered, the transaction was a private one;[1] and you had better, therefore, have the parties draw up an instrument providing that whenever the thief shall be apprehended and the goods recovered, the sum shall be restored to Sakubei.[2] Moreover, in case Kosuke informs you that in his opinion no suspicion attaches to Sakubei's family, [and asks for a search for the thief], you should sanction his request and instruct him to enter action against the thief, as soon as he is found. If, however, your special question is as to the propriety of Kosuke's receiving the money from Sakubei, you may, if your lord thinks best, order him to return it as soon as may be.

Year of the Monkey,
4th month."

[No. 47] *Money Loaned by an Innkeeper to a Traveler whose Goods were stolen at his Inn.*[3]

A Reply[4] to an Inquiry by a retainer of Matsudaira, Under-Minister of the Interior.

"In regard to your letter about Yabei, of Konosu post-town, Noguchi Tatsunosuke has reported to us that he has been tried before Asaoka Hikoshiro, deputy in charge. The said Yabei, when the goods of his lodgers, Sakata Jinbei and Takahashi Yahachi, were stolen, ought immediately to have reported it to the officials of the post-town and

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1. *Aitai*, that is, made without any authenticated instrument. 2. Apparently this is not because such was supposed to be the understanding of the parties, but because it was thought just. 3. No date appears. Cited from "*Kwanyoki*." 4. Probably by the Finance Magistrate.

No. 47] made complaint against the thief. But he did not do this, and hushed the matter up by presenting a sum of money to the lodgers. Moreover he knowingly allowed a traveler, claiming to be a retainer of Matsudaira, Lord of Echizen, to lodge the same night in another room in the house without even inquiring his name; and he entered his complaint only after you had sent and informed him that you had reported to the Magistrate. All these acts were violations of law; and you are to fine him 8 *kwammon*, order him to enter an action against the thief as soon as he is found, and inflict some lighter penalty on Jimbei and Yohachi. As for the 2 *bu* received by them from Yabei, you should take it from them, send it to Hikoshiro,[1] who should return it to Yabei, also notifying Hikoshiro in advance of these instructions.

Year of the Goat,
12th month."

[No. 48] *Disposition of Money Loan Actions in Osaka Jurisdiction.*

Instructions[2] to the Commandant[3] of Osaka.
Dated Temmei, I (Ox), 7 (September, 1781).

(1.) Disposition of money loan actions in Osaka jurisdiction.

Although the general rule has been that actions by residents of Osaka or any private fief[4] are to be brought before the Temple Magistrate[5] and actions by residents

1. The deputy. 2. By the Council of State. 3. *Jodai* (castle-deputy). The Commandant of Osaka, the chief of the Shogunate provincial cities, was in charge of the civil as well as the military affairs of the district. Under him were the Osaka Town Magistrates and other officials. 4. *Shiryo*,—a fief not held by the Shogunate family. 5. The defendants here would be residents of any other fief or of Shogunate territory.

of a Shogunate district [1] before the Finance Magistrate, in both of which cases the parties are to be summoned to the Chamber of Decisions by the complaint [2] of the presiding Temple or Finance Magistrate bearing his own first-seal [3] and the Full Chamber's indorsing-seal,[4] whereupon the case is tried and judgment rendered; nevertheless, hereafter, the rule in money loan actions shall be as follows:

In actions by residents of one of the Three Districts of Osaka or of the 4 *kuni* of Settsu, Kawachi, Idzumi, or Harima, against residents of one of the 28 *kuni* of Awa, Awaji, Sanuki, Iyo, Tosa, Bizen, Bichu, Bigo, Mimasaka, Aki, Suwo, Nagato, Idzumo, Hoki, Iwami, Inaba, Oki, Chikuzen, Chikugo, Buzen, Bugo, Hizen, Higo, Hyuga, Osumi, Satsuma, Iki, or Tsushima, and actions by residents of one of these 28 *kuni* against residents of Osaka, Settsu, Kawachi,

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1. *Go-ryo-chi*,—land administered by *daikwan* (deputies) or *jito* (esquires). The defendants here would be residents of any other Shogunate district (including Osaka, etc.), or of a private fief. The case is said to be "brought before" a Magistrate, but the only meaning of this is that the case is entered with the Magistrate and is really adjudged by the Chamber. The new arrangement here provided for means that the local Magistrates were to take preliminary cognizance, and then despatch the case to the Chamber, as before. 2. *Meyasu*. Apparently the *meyasu* had the character of an official writ, as well as a complaint. This passage would indicate that it was drawn up by the Complaints Bureau on the plaintiff's oral relation. 3. *Shohan*. See *ante*, p. 22. 4. *Ura* (back)-*han* (seal). It is not clear whether this refers to the inferior seal (*mitome-in*, which a man might have in addition to his *jitsu-in* or official seal), which might be borne on the back (*ura*) of the seal-block; or to the fact of the seal being impressed on the back of the document. The former is much the more probable. Thus the Full Chamber's sealing of the complaint would be known as *ura-ban* (here rendered "indorsing-seal"); while the ordinary summons for trial in a Magistrate's Court in 7 days would be termed *ura* (back)-*gaki* (writing); here rendered "indorsement." But it is not yet certain that such a distinction existed.

No. 48] Idzumi, or Harima, shall be disposed of (the old usages and precedents being observed) by the Osaka Town Magistrate's Office; except [actions against residents of] Idzumi, which shall be disposed of by the Magistrate of Sakai.[1]

(2.) Although the general rule has been that actions by townspeople of Osaka, Fushimi,[2] Nara,[3] Sakai, or [by residents] of any private fief are to be brought before the Temple Magistrate, and actions by residents of a Shogunate district before the Finance Magistrate, the parties being summoned in both cases by the presiding Magistrate's complaint bearing his first-seal and the Full Chamber's indorsing-seal, and trial and judgment thereupon ensuing, nevertheless hereafter the rule in money loan actions shall be as follows:

Actions (*a*) by those in the jurisdiction (4 *kuni*) of Osaka against those in the jurisdiction (4 *kuni*) of Kyoto, and (*b*) *vice versa:* Here (*a*) actions by those in the Osaka jurisdiction against residents in Yamashiro, Omi, and Tamba *kuni*,[4] shall be disposed of by the Kyoto Town Magistrate's Office, but actions against residents of Fushimi town by the Fushimi Town Magistrate, and of Yamato *kuni* by the Nara Town Magistrate; (*b*) actions by those in the Kyoto jurisdiction against those in Osaka jurisdiction shall be disposed of at Osaka, judgment being rendered according to the old customs, except those against residents of Idzumi *kuni*, which shall be disposed of by the Sakai Town Magistrate.

Note, that money loan actions brought by a number of residents of Kyoto, Fushimi, Nara, and Sakai, on

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1. The town second in commercial importance to Osaka; it was in the *kuni* of Idzumi. 2. The port and suburb of Kyoto, in Yamashiro *kuni*. 3. The chief town of Yamato *kuni*, formerly an Imperial capital. The above four towns, with Nagasaki, Hakodate, Niigata, Uraga, Shimoda, and Sumpu were of chief commercial importance and were each under a Shogunate Magistrate. 4. These, with Yamato, formed the Kyoto jurisdiction.

a joint complaint [against those in Osaka jurisdiction] shall be disposed of by the Osaka Town Magistrate, after the analogy of the above actions.

(3.) Actions against residents of *kuni* other than those mentioned, including money loan actions, shall [continue to] be disposed of by the Temple Magistrate, if brought by residents of Osaka or any private fief, and by the Finance Magistrate, if by residents of a Shogunate district, in both cases the [complaint bearing the] first-seal of the presiding Magistrate being sent to the proper tribunal[1] with an additional document by way of explanation.

Money loan actions shall, as above provided, always be determined according to the old usages and precedents. Actions other than these shall be disposed of according to the recent decree in the year of the Dog (1778), the cases being reported to the Chamber of Decisions and care being taken to observe the law with strictness. Up to the present time in an action begun by a complaint bearing the indorsing-seal of the Full Chamber of Decisions, the defendant has not been sent down [to Yedo] if a prior action is pending against him; but hereafter, even in such cases, he shall be sent down to Yedo to appear on the day appointed, if he has been summoned by a complaint with the indorsing-seal of the Full Chamber.

The above provisions you are required to communicate to the Osaka Town Magistrate's Office."

[No. 49] *Money Loan Actions against Players.*

A Reply of the Yedo Town Magistrate's Office to an Inquiry by the Osaka Town Magistrate.
Dated Bunsei, VI (Goat), 3, 12 (April 22, 1823).

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1. The Chamber of Decisions.

No. 49. 1. *Letter of the Town Magistrates of Yedo to those of Osaka.*

"We have perused your letter. You say that generally, in a money-loan action against a player, the loan is made upon the security of the wages to be received from the theatre to which he is bound; so that payment is invariably enforced in Osaka even though the debtor is a dependent in the household of another, not having a separate establishment of his own.[1] A case may be supposed where the player has died and the creditor sues his son, who has succeeded to his father's professional-name[2] in the calling of an action, or the suit, if there is no son to undertake payment, may be against a disciple who has succeeded to the name and is receiving wages from the theatre. You made some investigation for the purpose of deciding what disposition to make of such case; but being unable to discover any enactments or precedents on the point, you have made inquiry of us as to the existence of any enactments or precedents relating to the disposition of actions against players. We beg to reply that we have expressed our opinion in the enclosed document.[3]

8d month, 12th day.

Tsutsui, Lord of Iga.
Sakakibara, Minister of Imperial Revenues.

To

Naito, Captain of the Imperial Body-Guard,
Takai, Lord of Yamashiro.

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1. A reference to No. 28, 2, Art. 4, will show that actions could not usually be brought against a dependent. 2. This is the *geimyo* adopted by actors, story-tellers, dancing-girls, musicians, and a few others, corresponding to the firm or house name of merchants. The right of using it is a *kabu*, the name being alienable by the owner. Faithful pupils might be given the privilege of using it, and its transmission after death was usually provided for by a testamentary arrangement, if no son existed. 3. See 3, *infra*.

Note. You also inquire about the disposition of cases where the line of succession to a professional name has ended, and the name itself has been taken up, without any special connection with the last holder, by another person, who is now sued by the creditors of the predecessor. Our enclosure contains also our opinion on this point."

2. *Report of the Trial Bureau to the Town Magistrates in regard to the above Inquiry.*

a. Report[1] *made by the Headmen of Sakai and Fukiya wards to the Trial Bureau.*

"We respectfully report to you as follows:

(1) Payment of a deceased player's debts by a son who has succeeded to his professional name:

(2) Payment of a deceased player's debts by a disciple, the grantee[2] of the latter's professional name:

(3) Payment of a deceased player's debts by one who has taken up[3] his professional name, after it has remained awhile without a possessor:

You have made inquiries of us [as to the usage] on these points, and we reply as follows:

1. The Town Magistrates of Yedo referred the matter to their Trial Bureaus; the latter consulted two headmen as to the local usage. The reports of the headmen and of the two Bureaus constitute the second group of documents. From this material was made up the Reply itself of the Magistrates, which here appears as 3. It is interesting to compare the Reply with the other documents, for the writer has followed no one entirely, but has adopted what seemed to him the best points of all. The result is of special interest as indicating that the Magistrates in fact guided and took active part in the work of their offices,—a point of no small importance in the history of Japanese administration, where the chief offices constantly tended to become merely titular, and the real power to pass into the hands of subordinates. 2. *Yuzuri-uke-nin.* 3. *Tsugu* (follow, come next).

No. 49] (1) One Hanshiro, a player, the father of Hanshiro, borrowed the sum of 44 *ryo* from one Iso, a dependent in the household of Dembei, house-master, of New Idzumi ward, in Kwansei, XI (Goat), 10 (November, 1799). Of this amount 10 *ryo* were paid, and the said Iso, after the death of the father Hanshiro, in Kwansei, XII (Ape), 3, (April, 1800), and the succession to his name of his son Kumesaburo under the name of Hanshiro, demanded payment of the remaining 34 *ryo*. But her demands being fruitless, she brought an action, 3 years ago, in the year of the Dragon, 3d month, 29th day (May 11, 1820) against the present Hanshiro, the son, in the Court of the Minister of Imperial Revenues,[1] and he indorsed the complaint, on the 7th of the 4th month, in the ensuing year,[2] May 8, 1821. After consultation by the parties, the plaintiff received 18 *ryo*, and a private agreement as to the remainder was reached on the very day appointed for the joinder of suit,[3] and an instrument drawn up fixing a period for the paymant of the amount.

(2) One Gennosuke, a player, borrowed the sum of 70 *ryo* from Kimbei, renting the shop of Chuhachi, of South Maki ward. The said Gennosuke fell ill and died, in Bunkwa, IX (Ape), 12 (January, 1813), and his disciple Gempei, renting the shop of Gisaburo, of Iwashiro ward, succeeded to the name Gennosuke. The said Kimbei then brought an action on Bunsei, I (Tiger), 9, 29 (October 28, 1818) before Nagate, Lord of Bigo, then in office, for the repayment of the whole amount of the debt of Gennosuke the master, principal and interest together coming to 148 *ryo*, 3 *bu*, and an indorsement of the complaint was made on the 8th of the 10th month, in the same year (November 6, 1818).

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1. Sakakibara, one of the Magistrates to whom the Bureau is reporting. 2. Perhaps an error for "same"; in the action below only 9 days elapsed between entering the action and indorsing. In this case the date would be May 18, 1820. 3. *Kuji-awase*.

A trial was had, and an order of payment issued. But at this point an agreement was reached by the parties that, as the defendant was too young and too low in his profession to be able to undertake the payment of so large an amount, he should renounce the name and never again use it; whereupon, as there was no reason why Kimbei should be allowed to prosecute the action further, he consented to a private settlement, and on the 24th of the 12th month, in the same year (January 19, 1819) a certificate of discharge was filed.

(3). As to the payment of the debts of a deceased player by one who has taken up his professional name, after it has remained a while without a possessor, there has been no case of the sort. There have been cases, to be sure, where the new possessor, who is not a disciple but merely some other player [having no special connection with the deceased,] has given an endowment-fund to the family-temple of the deceased for his benefit, or has voluntarily presented a small sum of money to the deceased's parents or wife. But there has been no case in which the new possessor undertook the payment of the deceased's debts, nor in which an action was brought against him to compel payment.

We report as above, in answer to your inquiries.

Bunsei, VI (Goat), 2, 1 (March 13, 1823).

Gorobei,

Headman of Sakai ward;

Shozayemon,

Headman of Fukiya ward.

To the Court." [1]

b. Report of the Bureau.

"In regard to the inquiry of the Osaka Town Magistrates, [we have the following to report:]

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1. *Go-bansho.*

No. 49] (1.) What disposition shall be made of an action by the creditor of a deceased player against the latter's son, who has succeeded to the father's professional name, the action being upon a claim against the father?

In regard to this, we think that, although a son ought to be liable [for his father's debts where he has succeeded to the estate], yet it must be noted that in this case the creditor did not place special reliance on the father's right to the professional-name, but on his skill and the wages to be earned thereby; so that if the son were less accomplished in his profession or were in poor circumstances for any reason, some arrangement should be adopted by which the creditor could be convinced of the true basis of the debt and be made to agree to a composition. You should therefore, perhaps, first instruct the parties to settle without the aid of the Court, taking into consideration the circumstances of the son.

Rubric. An action was brought, in Bunsei, III (Dragon), 3 (April, 1820), in the Court[1] of the Minister of the Imperial Revenues,[2] by one Iso, widow of Hanshichi, dependent in the house of Dembei, house-master of New Idzumi ward, who had lent 34 *ryo* to one Hanshiro, a player, renting the shop of Gensuke, Fukagawa district, Yanagawa ward, the defendant being Hanshiro, formerly known as Kumetaburo, son of the said Hanshiro (now deceased) to whom the money had been lent. The Court indorsed the action, tried it, and finally had the defendant pay 18 *ryo* in cash[3] and make out a new instrument for the remainder, to be paid by private settlement.

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1. *Go-bansho.* 2. Sakakibara, one of the Town Magistrates in whose Court the writers of this document serve. 3. *To* (present)-*kin* (money).

(2). What disposition shall be made of an action by the creditor of a deceased player against a disciple of the player who has taken his professional-name and is receiving wages from the theatre, there being no son to undertake the payment?

On this point, we think that when an action is brought against a mere name-successor, who is not the successor to the estate, a distinction should be observed between the case where the defendant owes a special prosperity in his profession to the possession of that name, and the case where, as he earns comparatively little, on account of professional mediocrity, or of not having received a very popular name, he is not in circumstances which make it reasonable to undertake payment. In such cases the Court should persuade the parties to consider the facts and make an amicable arrangement. Of course if it appears that the disciple's adoption of the master's name was clearly made without any understanding as to the payment of the latter's debts, the plaintiff should recover nothing.

Rubric. One Kimbei, renting the shop of Chuhachi, in South Maki ward, lent a sum of 70 *ryo* to Gennosuke, a player. The said Gennosuke afterwards fell sick and died, and one Gempei succeeded to his estate[1] and took his name Gennosuke; whereupon the said Kimbei brought suit against him before Nagate, Lord of Bigo, then in this office, in Bunsei, I (Tiger), 9 (October, 1818). The Court indorsed the action; but while the action was pending, a private settlement was reached by the parties, the defendant proposing that, as his lack of professional skill did not justify him in taking up his master's

1. *Meiseki.*

No. 49] name, he should relinquish it and never afterwards take the name of Gennosuke. So it was unnecessary to proceed further in the litigation, and the matter was privately settled in this way.

(3) What disposition should be made of an action by the creditor of a deceased player brought against one who has taken up the deceased's professional name without having had any special connection with the deceased, the name having been for some time without a possessor?

On this point we think that although it is reasonable that one who merely takes up the professional name of a deceased player, without having, as you say, had any special connection with the deceased, should not be held liable for the latter's debts; yet after all the very fact of his having adopted that name indicates that there must have been a connection of some sort. So that in each case, we think the parties should be summoned and examined, and, if the case seems to require it, they should be persuaded to make an amicable arrangement.

Such is our opinion in regard to the disposition of actions against players. There are no established rules on the subject, nor can we find any precedents exactly covering these points. We report to you as above, enclosing copies of the certificate of discharge referred to in the rubric.

Year of the Goat,
2d month.

The Trial Bureau."

c. *Supplementary Report of the Trial Bureau.*

"The above report was sent by us to the Trial Bureau of the other Department[1] in the above month, and they returned their opinion on the 15th of the same month in the enclosed reply, which we now lay before you, our Chief, without alteration, as follows :

1. One of the Bureaus was in the North Magistrate's Court, the other in the South; but it does not here appear which is which.

1st *Question.* In regard to your inquiry, if the Court is merely to persuade the parties as to the just course to pursue, you should proceed as you suggest; but if a formal judgment is to be given, we think that payment should be enforced according to the face of the instrument, unless it be determined to order payment in proportion to the amount of wages received.

2nd *Question.* We think that the defendant ought not to be held liable, if it appear that, although he has adopted the professional-name of his master, he has not changed his own temple-registration [1] and become the latter's adopted son, and consequently neither has the same family-temple [2] as the deceased nor has undertaken to support the latter's family,—in short, that he is in no sense a successor, properly so called, but only the successor to a professional-name.

3rd *Question.* As you say in your letter, there is no reason why one who merely takes up the professional-name of a deceased player, without having had any special connection with the deceased, should be held liable for the latter's debts; so that in the absence of special circumstances,[3] we think you ought never even to persuade the parties [to a private settlement, but should dismiss the complaint absolutely]."

3. *Reply of the Town Magistrates of Yedo.*

(1.) What disposition shall be made of an action by the creditor of a deceased player against the latter's son

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1. This was the record of family-membership. 2. *Bodai-sho.* The *bodai-sho* of a given family was that Buddhist temple to which the family brought its dead for burial. 3. Such as a special undertaking to pay.

No. 49] who has succeeded to the father's professional name and follows the occupation of a player, the action being upon a claim against the father?

In regard to this, we think that, although a son ought to be liable [for his father's debts where he has succeeded to the estate], yet it must be noted that in this case the creditor did not place special reliance on the father's right to the professional-name, but on his skill and the wages to be earned thereby; so that if the son were less accomplished in his profession or were in poor circumstances for any reason, some arrangement should be adopted by which the creditor could be convinced of the true basis of the debt and be made to agree to a composition. You should therefore, perhaps, first instruct the parties to settle without the aid of the Court, taking into consideration the circumstances of the son; and, if there is no escape from an action, you should, after rendering judgment, endeavor to enforce payment of the amount named in the face of the instrument.

(2.) What disposition shall be made of an action by the creditor of a deceased player against a disciple of the player, who has taken up his professional name and is receiving wages from the theatre, there being no son to undertake the payment?

On this point we reply that where a mere name-successor, who is not the successor to the estate, is sued, he ought not to be held liable, if it appears that, although he has adopted his master's professional name, he has nevertheless not changed his own temple-registration and become the latter's adopted son, and consequently neither has the same family-temple as the deceased nor has undertaken to support the latter's family—in short, that he is in no sense a successor, properly so called, but only the successor to a professional-name. Still, if it appears that he owes a special prosperity in his profession to the possession of that name, this should be taken into

consideration, and, if the case seems to require it, the parties should be shown the importance of this fact and directed to consult and make an amicable arrangement.

(3.) What disposition should be made of an action by the creditor of a deceased player brought against one who has taken up the deceased's professional name without having had any special connection with the deceased,[1] the name having been for some time without a possessor?

On this point we think that although it is reasonable that one who merely takes up the professional name of a deceased player, without having, as you say, had any special connection with the deceased, should not be held liable for the latter's debts, yet after all the very fact of his having adopted that name indicates that there must have been some connection of some sort. So that in each case, we think, the parties should be summoned and examined, and if the case seems to require it, they should be persuaded to make an amicable arrangement.

We have no precedents covering the cases you state, but we send you, as above, our opinion on those cases as to the proper method of disposing of them."

[No. 50] *Petition for the Indorsing-Seal of the Chamber in a Money Loan Action, by one who has removed from Settsu, Kawachi, Idzumi, or Harima kuni to any other kuni, against a resident of one of those kuni.*

A Memorandum by the Town Magistrate of Yedo.[2]

Dated Bunsei, 1 (Tiger,) 8 (September, 1818).

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1. For example, as son or as disciple. 2. Probably cited from "*Shoji-dome.*"

No. 50] "A townsman, formerly residing in Osaka, Awaza-yashiro ward, there lent a sum of money, some years ago, to Gojima Uzen, a Councillor of the First Rank.[1] The debt being in arrear, the said townsman, who has since removed to this City,[2] brought an action before me to recover payment. I thereupon made inquiry about the plaintiff to the Town Magistrate of Osaka, and received in reply a letter, from which the following is an extract:

'Whenever a townsman of this place[3] wishes to remove elsewhere, he must first petition for permission, and a regulation forbids him to remove without such notice. The regulation also provides that the petition shall be granted, if the petitioner desires to move to one of the four *kuni* of Settsu, Kawachi, Idzumi, and Harima, provided he is indebted to no one for a money loan or for unpaid purchase-money; but it shall not be granted if his desire is to remove to any *kuni* other than the above four, even though he is not indebted for a money loan or for unpaid purchase-money, unless he has no claims against others [in Osaka] for money loans or unpaid purchase-money.'

Such was the report from Osaka. Now as the plaintiff here is still domiciled in that place, [and as he alleges a claim against a resident there,] we ought to summon his ward-officials and deliver him over to them, and this I have done.

Reported from the Office.[4]

Bunsei, I (Tiger), 8 (September, 1818)."

[No. 51] *Disposition of Money-Loan Actions in Osaka.*

1. *An Instruction to the Three Magistrates*[5] *by the Council of State.*

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1. *Kotai-yoriai.* See No. 45. 2. Yedo. 3. Osaka. 4. *Go-yo* (Government business)-*heya* (room); it is not clear what office is meant. 5. That is, the Temple, Finance, and Yedo Town

"To the Three Magistrates.

The disposition of money-loan actions in Osaka shall henceforth be made similarly to the practice in such cases in this place;[1] that is, first, an order for payment within 30 days, without regard to the amount of the debt; then, if payment is not made during that term, an order for instalment-payment, based on the amount of the debt. No distinction shall be made between precedent actions and subsequent actions;[2] and all actions, no matter how numerous they may be, shall be disposed of in the above manner. We have instructed [the Osaka Town Magistrates] to deliberate with you over the details.

Year of the Boar,
7th month, 19th day,"

2. *Report to the Council of State by the Chamber of Decisions, as to a Consultation by the Osaka Town Magistrates.*

a. Letter enclosing the Report.

"As we have been instructed that the disposition of money-loan actions in Osaka is henceforth to be made similarly to the practice in such cases in this place,—that is, first, an order for payment within 30 days, without regard to the amount of the debt, and then, if payment is not made during that term, an order for instalment payments, based on the amount of the debt,—and that no distinction is to be made between precedent and subsequent actions,

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Magistrates. No date appears; but the same subject comes up in the documents contained in Part VI, in the cases relating to Pledges of Land. A discussion of the dates of the present documents will be deferred to that place. It is sufficient to say that No. 51 is of either 1827 or 1839, probably the latter; and that Nos. 52 and 53 lie between 1806 (or a little earlier) and 1817.

1. Yedo. 2. See No. 28, *ante*, and *b*, *infra*.

No. 50. all actions, no matter how numerous they may be, being disposed of in the above manner; and as you have instructed the Osaka Town Magistrates to deliberate with us as to details, and they have lately consulted us on the subject, we now transmit to you our answers, contained in the enclosure, and request your sanction for them."

b. Preface to the Report.

"Inasmuch as the complaints, in certain actions on money-loans, bearing our indorsing-seals[1] summoning the parties to Yedo, were returned to us from Osaka because a precedent action was already pending [against the same defendant] in Osaka, we have in the interval since the last year of the Goat[2] brought to your attention [more than once] the subject of a reform in the method of disposing of money-loan actions [in Osaka], [and you have in consequence issued your recent instructions]; we have therefore determined to express our opinion as to the method of disposing of the class of actions which are to be treated like money-loan actions. [But it is not easy to determine absolutely and once for all what sorts of claims are to be included in such a list, and what sorts excluded.] For example, a pledge is to be treated as an [ordinary] money loan, if for some reason it cannot stand as a pledge. Now, as to pledges, there was formerly only one general form recognized; but in Gembun, II, Serpent (1837,) a special rule was made for the Eight provinces of the Kwanto District[3] and for Idzu *kuni*, the details of which are contained in the 1st section[4] of that law; and [since then] there have arisen many different forms of pledge of land, and no action relating to land-pledge,

1. I.e., actions in which the Chamber took jurisdiction. 2. Seven years before. 3. Lit., first volume; but it might have contained only a few pages. 4. The special and chief domain of the Shogunate, centering in Yedo.

cropping,[1] or house-pledge, can be properly determined until the provisions of the instrument have been carefully examined. Thus, though sometimes a land-pledge or house-pledge may require to be placed on the footing of a hypothec, which is one of the money-loan actions, and first a 30-day term and then instalment-payments ordered, yet this cannot be done without first examining the circumstances of each case. For these reasons we should prefer to have actions in Osaka disposed of on the basis of the forms of transactions in use there. It is true that the general rule with us has been to treat actions for land-pledge, cropping, house-pledge, and hypothec, brought before us from any *kuni* other than Idzu and the Eight Provinces of the Kwanto, according to a uniform rule, and to recommend you to the same effect, whenever you referred to us the inquiry of a Magistrate in some other *kuni* in regard to an action of pledge, etc., before him. Nevertheless, as regards Osaka actions, it would certainly cause much confusion, were a change to be made suddenly and not gradually in the rules applicable to this subject. We think, therefore, that in our answer to the Osaka Town Magistrates, we had better deal solely with the subject of inquiry mentioned in the letter accompanying the instruction,[2] *i. e.* the kinds of claims proper to be treated on the footing of money loans.

We hereby forward you our report in a separate enclosure.

Year of the Rat,
10th month, 16th day."

c. Report[3] *of the Chamber of Decisions.*

"The Full Chamber of Decisions has received instruc-

1. *Kosaku;* tenancy of land. See Part II, p. 53. 2. The Council probably enclosed with the Instruction the inquiries from Osaka in *c.* 3. It is in form a reply to the Osaka Magistrates, but is here laid before the Council in the shape of a report.

No. 51] tions [from the Council of State] that money-loan actions in your district are to be disposed of in similar manner to such actions here, and we therefore make the following regulations, in reply to the inquiries recently addressed to us by you.

(1). 'When the complaint is entered in a money-loan action, shall the indorsement be to the effect that, if payment can be made at once, it shall be, and that, if the defendant has any opposition to make, a joint-pleading[1] shall take place on such-and-such a day, and shall the complaint thus indorsed be delivered to the plaintiff, with instructions to serve it on the defendant? If so, how many days shall be allowed before the day of appearance,[2] and in determining this should any distinction be made according as the defendant is a villager or a townsman?'

On this point, we reply that the usual practice with us, in an action against a townsman of this place, is to appoint[3] the 7th day, summon both parties by indorsement of the Magistrate's Office [when the action is entered] to appear at the Office, examine them there, and send them over to the Chamber of Decisions, where final judgment is passed. In actions against country people the day of appearance is determined according to the distance [of the defendant's locality], in fixing which the opinion of the plaintiff is considered, and the parties, [after appearing], are then summoned to the Chamber by an indorsement containing the first-seal of the presiding Magistrate and the indorsing-seal of the Full Chamber, and there the

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1. *Tai-ketsu*. 2. *Sashi-bi*. 3. *Sashi*. The *sashi-bi*, or day of appearance, is apparently the day fixed for the preliminary hearing of the case, the taking of evidence, etc., all this being managed by the officials of the Magistrate's Office. Then follows the *tai-ketsu*, or joint-pleading, on a regular Court-day, when the parties appear and are questioned further, if necessary, by the Magistrates, who have already read the papers of the case. Judgment was usually deferred until another Court-day.

joint-pleading takes place. Of course, the joint-pleading in a money-action is to be appointed for [the regular days],—the 4th, an attendance-day, and the 21st, a formal-day, [1]—on which days also judgments are to be rendered and instalment-payments ordered. But there is no fixed rule for determining the day of appearance, and we think that you may decide according to the custom, if any, in your district in regard to appearance-days in money actions and others.

(2) 'In such actions, where at the joint-pleading the defendant admits that he is in fact liable for the loan, may the Court proceed to order payment within 30 days, and, then, if the case is not settled at the end of the term, order immediate payment of the first instalment and at the same time fix the [amounts and times of the] succeeding instalments? If, when instalment-payments are ordered, the sums are paid monthly without coming into Court, shall such payments be sanctioned, unless notice is given [at the time]?'

On this point, we reply that it sometimes occurs here that judgment is rendered on the same day as the joint-pleading; but usually an order is made that, as the case cannot be decided immediately, the documents must be examined again, [and judgment deferred]; this examination takes place at the official residence of the Magistrate before whom the action was began; [first, the interest is inspected]; if, for example, the terms of the instrument show the interest to be usurious, it is reduced to 15 per cent per year; then the total amount of interest is calculated, up to and including the month preceding that in which the action was entered; then all sums paid privately before action was brought are deducted; and an order is then made for payment within 30 days of the whole sum due, principal and interest, and the defendant is

1. See No. 13, p. 23, note 4, *ante*.

No. 51; ordered to sign an instrument [undertaking payment], this being delivered to the plaintiff. If the plaintiff afterwards makes complaint that payment was not made during the term, payment of the first instalment is enforced by the Chamber of Decisions, and the above instrument is again delivered to the plaintiff (to be kept until the whole debt is discharged) with a slip appended reciting: 'So much has been paid; the remainder to be paid within a term of etc.' Upon payment of the debt in full the instrument is delivered up to the Chamber by the plaintiff. Records of all these proceedings are kept in the record-book[1] of the Chamber. We think that you had better proceed in a manner similar to the above.

The usual process has been, in actions for arrears of money loans since Yenkyo, I, Rat (1744),[2] to summon the parties for the 4th or the 21st, and order payment within 30 days, and, if within that term a portion, however small, is paid, to order instalment-payments twice a month, and, if arrears still continue, to order execution in bankruptcy. If nothing at all is paid in the first 30-day term, the defendant is ordered to pay down on the same day[3] a certain amount as the first instalment, and to pay the remainder in instalments twice a month. If the defendant does not appear, a summons[4] is to be sent to appear on the next Court-day for money actions, and on that day [immediate] payment is to be ordered, so that no further order may be made for the payment of that amount. In establishing the procedure in this matter, so as to suit the needs of a particular locality, due regard must be paid to its money circulation.[5] But in all cases the above rules should be referred to as a standard.

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1. *Moto-cho.* 2. See No. 5, *ante.* 3. That is, the 30th day, on which he has appeared in Court. 4. *Sashi-gaki.* 5. See No. 28, 1, *ante.* The money circulation would be injuriously affected by too great laxity towards the debtor.

Note, that if an instalment is paid out of Court,[1] it is to be sanctioned by the Court upon notice from the plaintiff, and a note is to be made in the record-book. We enclose a list of the proper periods and amounts for the instalments.[2]

(3). 'If, after an order for instalment-payments has been made, no payment is made during the 30 days,[3] but on the day before the day of appearance[4] the plaintiff receives from him, out of Court, the amount due on the morrow, then must both parties give notice to the Court, or may this payment be sanctioned if the defendant returns the summons to Court and alone gives notice of the payment? Furthermore, what change, [if any], is to be made in the form of summons?'

On this point we reply that instalment-payments are to be made, as above mentioned, twice a month, after order made; but if the defendant does not appear [on the first payment-day], for example, on the 4th, a summons shall be issued, on application of the plaintiff, requiring him to 'appear on the 21st, at 5 o'clock in the morning, as there are some questions to be put to him.'

Rubric. Note, that the customary hour here [for opening Court] is 7 o'clock in the morning, for an attendance-day,[5] and 5 o'clock for a formal-day.[5] You doubtless have your own customs on this point.

If an instalment-payment is made out of Court, both parties must notify the Magistrate's Office in which the action was entered, on the day before the day set for appearance, and the defendant must return the summons to Court. The practice is, when a money action or any other is sent to the Chamber of Decisions for a

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1. *Nai-bun* (privately). 2. The reference probably is to the list in No. 102, *post*. 3. Though it is said that the instalments were payable twice monthly, the first instalment seems not to have been due for 30 days. 4. The 30th day. 5. See No. 13, *ante*.

No. 51] particular formal-day, for all the previous proceedings in the case to be entered in a book [kept in the Chamber] on the day before the formal-day. So that the plaintiff alone, in the case we are considering, would have the entry made [in this book] of the amount received out of Court, and the payment should be sanctioned on his statement that he has received it.

(4) 'If the defendant, after failing, as above mentioned, to pay [on the first instalment-day], appears, in obedience to the summons, on the day [therein appointed] for appearance, bringing with him the prescribed sum, may the Court, permitting him to deliver it to the plaintiff, let him go without some penalty for his failure to pay as ordered at the end of 30 days?'

On this point we reply that it follows from what has just been said in regard to the mode of enforcing payment of an instalment when the defendant does not appear as appointed, that no penalty can be inflicted for that failure.[1]

(5) 'What is to be done when the defendant makes no payment of any kind?'

On this point we reply that, if the defendant brings no instalment-payment, both parties are to be sent to the official residence of the Magistrate with whom the action was entered, and after investigation an order shall be made to pay without fail. No further proceeding shall be taken until notice is given of a failure to comply with this order.

(6) 'Where the defendant often fails to bring in the instalment on the day for which he is summoned, may the Court confiscate his entire property and deliver it to the plaintiff? If so, how many failures to pay will justify such a step?'[2]

1. This paragraph is very elliptically worded, and its meaning is not certain. 2. The previous question refers to the case where nothing at all has been paid; the present, to the case where something has been paid, but from time to time, or several times in succession, a default occurs.

On this point we reply that, though the rule is to order execution in bankruptcy when irregularities occur in the payment of the instalments, yet there is no fixed rule as to the number of defaults which must precede such a step. The usual proceeding is to order commitment to the charge of a friend[1] or confinement in hand-stocks,[2] if no payment at all is made, meanwhile continuing to urge payment, say for 2 or 3 months; but if even then no payment is made, execution in bankruptcy is ordered. There is no fixed rule as to this length of time, for it must depend on the circumstances of each case. But the practice above-mentioned will serve as a standard. The frequen recurrence of bankruptcy would be avoided if in every case careful and repeated examinations were held and payment of instalments sought to be enforced by the Magistrate in charge of the case.

(7). 'If the defendant fails to bring in the whole amount of an instalment on the day appointed, and offers only one-half or two-thirds, may he be permitted to deliver it to the plaintiff, a penalty of some sort being inflicted in case the amount is extremely small, less than the above? Or shall we decline to order him to deliver it over unless the whole amount is paid?'

On this point we reply that there is no fixed rule; but our own customary practice may be followed. That practice is, when the whole amount of an instalment is not brought into Court, to let him deliver over whatever he has brought, and then either to have the plaintiff go to the defendant's house and receive the remainder, or to send both parties to the Magistrate's Office which has charge of the case to be examined again;[3] in most cases payment can be

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1. *Azukari.* 2. *Te-jo.* 3. These frequent examinations of the parties were made with the object of ascertaining their relative circumstances and of bringing moral pressure to bear upon the debtor to induce him to pay, if he really was able, or to obtain the money from friends, if possible.

No. 51] obtained in this way. As a rule no penalty is inflicted for a partial default; yet if there is culpability[1] in attending to the payment of the instalments, the defendant, if a farmer or townsman, is sentenced to confinement in hand-stocks; a further examination of the matter is afterwards made, and if he continues to be in fault,[1] execution in bankruptcy is to be ordered.

Note, that there is a regulation that if a defendant does not obey a summons, he shall be sentenced, if a priest, to 30 days' house confinement[2] or voluntary retirement,[3] according to his rank, or if a townsman or farmer, to 30 days' hand-stocks confinement, or if a Government merchant,[4] to 30 days' confinement. If any member of the priesthood is culpable in attending to the payment of instalments, he shall invariably be reported to the Temple Magistrate.

(8.) 'If, after instalment-payments have been ordered-the defendant's house-manager brings action for eviction,[5] may sanction be given, in spite of the pending instalment-proceedings?'

On this point we reply that eviction[6] may be ordered, even though the instalment-payment, have not been completed. If the defendant petitions for consent to removal or to substitution of address,[7] consent shall be given, the entry made in the record-book of the Court, and a slip appended to the defendant's instrument of undertaking.[8]

(9.) 'If, while some instalment-payments are yet

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1. *Furachi*,—a common official word for unconscionable conduct of a litigating party. Here the idea is that the debtor could pay more, if he made greater efforts. 2. *Oshikome*. 3. *Yenryo*. In this case the defendant, as in *oshikome*, must remain in his house; but the term "voluntary retirement" was reserved for those of higher rank as a euphemism appropriate to their position. 4. See No. 5, *ante*. 5. *Iye* (house)-*ake* (clear, empty); equivalent to *tana-date*, in No. 6, *ante*. 6. *Tana-date*. 7. *Namaye-kakikaye*. 8. See Answer (2), *ante*.

unpaid, the defendant is arrested or committed to friends in some locality[1] [on some criminal charge, preliminary to trial], may the instalment dues be regarded as in suspense[2] during that period? Of course, if ultimately no punishment should be inflicted, the enforcement of payment must be resumed.'

On this point the proceeding should be as you suggest.

(10.) 'If, before payment has been completed, either of the parties falls ill and dies, shall the instalment-dues be regarded as having lapsed[3] and an order be made for new action to be brought as soon as a successor is determined upon; or shall the enforcement of payment merely be suspended until the successor is determined upon and then be resumed?'

On this point we reply that, if either party dies before payment is completed, payment shall be delayed until a successor is determined upon, and a substitution of names[4] shall be made, on application in the manner above stated, the enforcement of instalments payments then being resumed.

(11.) 'Where one of the parties wishes to make a journey, and asks leave to appoint a representative[5] to act for him, may this be allowed?'

On this point we reply that a request to appoint a representative should be granted.

(12.) 'May actions pending against Government merchants be disposed of according to the ordinary procedure?'

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1. *Tokoro-azuke.* 2. *Uwa* (surface)-*uki* (float). 3. *Nagare* (float away, drift off). This term is used (see Part II) to signify the forfeiture of mortgaged property. Here it indicates a lapse of the old arrangement and a necessity for making a new one. "Void" would perhaps also convey the meaning. 4. *Namaye-kakikaye.* 5. *Dai-no-mono.*

No. 51] On this point we reply that with us the debts, not only of Government merchants, but also of military gentry are treated in the same manner as those of farmers or townsmen, except that no term-deed[1] is required of military gentry, a final-memorandum[2] being given [by the Court] to each party. But as in your jurisdiction you never have before you claims against military gentry, it is unnecessary to go into the subject further. It is enough to say that Government merchants are in these matters on the same footing as farmers and townsmen.

(13.) 'Actions for arrears on provisional bills of exchange[3] due in connection with Government bills of exchange?'[4]

On this point we reply that there is no fixed rule in regard to sums due on bills of exchange; the circumstances of each case should decide.

(14.) 'Actions for arrears of loans from prayer-funds or endowment-funds received by temples from the Government, or of loans by royal abbots?'[5]

On this point we reply that all such loans, including even those from funds given by the Government, are to be treated on the same footing as ordinary money-loans, unless by reason of some special circumstances the matter is laid before [the Council of State] by the royal abbot or priest, as the case may be, and an order is received [from the Council] as to the mode of disposition; the order being transmitted by the Temple Magistrate for execution to the Court concerned.

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1. *Nichigen-tegata;* probably the same as the "instrument of undertaking" mentioned in Answers (8) and (2). 2. *Oshikiri-kakitsuke;* a euphemism for the benefit of the military gentry, the purpose of the document being the same. 3. *Shita* (below)-*kawase-gin. Shita* sometimes has the sense of "supplementary," "substitutionary;" the term seems to mean here a preliminary or provisional bill. 4. *On-kawase-kin-gin.* 5. *Miyamonseki.* See No. 32, *ante.*

(15.) 'Actions on loans secured by house pledges?'

(16.) 'Actions on loans secured by land-pledges and the various kinds of hypothec?'

On the claims mentioned in the two preceding questions we have received no instructions [from the Council,] and therefore are unable to answer.[1]

(17.) 'Actions for money received on behalf of another.[2] Shall payment be enforced merely on the evidence of an entry in the account-book,[3] even though no instrument [was drawn up between the parties], or is an instrument indispensable?'

On this point we reply that such actions are to be treated on the footing of [ordinary] money loans, if the claim is of a sort similar to that for money paid on behalf of another.[4] [In either case] payment may be enforced, even though no instrument exists, if the claim is not disputed. But if the parties contradict each other, judgment cannot be rendered merely on a book-entry.

(18.) 'Actions for money paid on behalf of another?'

On this point we reply, that these actions are to be treated on the footing of [ordinary] money-loans.

(19.) 'Actions for arrears of yearly instalments?'[6]

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1. This refers to the difficulties mentioned by the Chamber in the Preface to their Report (2, *ante*), and their reluctance to lay down rules for pledges and hypothecs. 2. *Tori* (take)-*kaye* (instead)-*kin*. 3. *Chomen*. 4. See the next question. 5. *Tate* (stand)-*kaye* (instead)-*kin*. In ordinary usage *torikaye* and *tatekaye* are synonymous, and signify "substitute." What the distinction is here cannot be made out. It may be suggested that *torikaye-kin* is "money *accepted* instead of another," the action thus being against an agent for money received, and the account-book mentioned being that of the debtor; while *tatekaye-kin* is "money *paid* for another," the payor thus bringing action against the debtor. This rendering has been adopted for want of a better. 6. *Nempu*. See No. 28, 2, Art. 22.

No. 51] On this point we reply that payment of yearly-instalments is to be enforced in the same manner as [ordinary] money-loans according to the terms of the instrument fixing the instalments. But payment is not to be ordered of amounts not yet due. The instrument, indorsed to this effect, is to be given to the plaintiff; and whenever he brings action for amounts due and unpaid, payment is to be ordered without regard to the number of them.

(20.) 'Actions for the rent of chattels leased?'[1]

On this point we reply that these actions are probably to be treated like [ordinary] money loans.

To the preceding 8 questions, as you perceive, we have replied generally in the affirmative, that these actions are to be treated on the footing of [ordinary] money-loans, because, though they differ more or less [from ordinary loans], they are substantially of the same sort. We have tried to answer your questions as specifically as possible.

(21.) 'Actions for unpaid purchase-money?'

(22.) 'Actions for loans secured by house-pledges?'

(23.) 'Actions for dowry-money?'

(24.) 'Actions for house-building expenses?'[2]

(25.) 'Actions for wages of daily labor?'

(26.) 'Actions for loans from a *zato's* patent-fund?'

(27.) 'Actions for exchange-money?'

(28.) 'Actions for sundry-expense money?'

(29.) 'Actions for remittance-money?'

(30.) 'Actions for investment-money?'

(31.) 'Actions for earnest-money?'

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1. *Kashi-motsu chin-sen*: probably the same as the subject of Art. 21, in No. 28, 2. 2. *Daiku* (carpenter)-*saku* (building)-*ryo*; doubtless the same as *fushin-kin* (building-loans), in No. 28, 2, Art. 19, *ante*. 3. For this and the other terms, see *passim* Nos. 1, 5, and 28, *ante*.

(32.) 'Actions for money lent on deeds of sale of various articles?'[1]

Claims of the preceding 12 sorts are to be treated on the footing of [ordinary] money-loans.

(33.) 'Actions for money-deposited as security?'[2]

On this point we reply that you doubtless refer to those deposits made by undertakers of enterprises,[3] with the agreement that they are to be refunded as soon as the enterprise is completed. If so, they are not to be placed on the footing of [ordinary] money loans [as an invariable rule], but must be determined according to the circumstances of each case; so that we can give no final opinion without a knowledge of each case.

(34.) 'Actions for arrears of taxes payable by croppers.[4]

(35.) 'Actions for servants' surety-money?'

As to these claims, we have received no instructions [from the Council] and so cannot answer you.

The last 15 of this list you have been accustomed to treat in analogy to [ordinary] money-loans, and you had better continue to do the same. We shall report further to you on any other matters that may seem desirable; here we have confined ourselves to the questions propounded by you and cited above. You may, as you suggest, make further inquiries of us on any topics on which you may desire information. But it must be remembered that we can give you no answer in regard to claims which are not to be treated in analogy to [ordinary] money-loans, inasmuch as on these subjects we have as yet received no instructions [from the Council.]

Year of the Rat,

10th month."

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1. *Shoshiki-uriwatashi-shomon*; doubtless corresponding to (13), in No. 5, *ante*. 2. *Shiki-kin*; corresponding to *mimoto-shoko-kin*, in No. 28, 2, Art. 20, *ante*. 3. *Ukeoi-nin*. 4. *Ge-saku*; tenants of agricultural land. See Part II, Ch. IV.

No. 52] [No 52] *Disposition of Money-Loan Actions in Osaka.*[1]

"Memorandum.

(1.) The usual practice is here, in actions on money-loans, when payment is not made after an order for payment in a term of months,[2] or for hand-stock confinement, or for house-confinement, etc, to order the defendant to deliver up all his property. If he has a house or residence-land or ricefield or upland which has been put in pledge to a townsman, it ought to be handed over to the pledgee, provided the instrument was lawfully executed.

(2.) If the person subject to bankruptcy is liable for arrears of taxes due to the esquire,[3] an examination is made of the village account-books and a report made by the officers of the esquire, and if the Court is satisfied as to the existence and amount of the claim, it orders the plaintiff to pay the arrears and then take possession of the entire estate.

(3.) If the bankrupt has borrowed of the feudal deputy[4] a sum of money from the latter's assistance-fund,[5] on the security of the borrower's ricefield or upland or of his house or residence land, and if notice of this is given [to the Court] by the deputy, the plaintiff is ordered to surrender the property [so mortgaged] to the deputy, and then himself receives the remainder of the entire property. Such is the custom [with reference to deputies of the Shogunate;] but there is no precedent in regard to officials of private fiefs.[6]

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1. This is cited from "*Chiho-kosai-roku*," but neither date nor source appears. It was probably filed in connection with the preceding documents. As to its date, see note to No. 51. 2. *Tsuki-kagiri sumikata*,—the Osaka phrase corresponding with *nichigen*, etc. 3. *Jito*. 4. *Daikwan*. 5. *Tsute-kin*; the euphemism for his salary. 6. *Shiryo*: the fiefs outside of the Tokugawa family.

The above is said to be the customary process here, as stated in the letter to Odagiri, Lord of Tosa, and Ishikawa, Under-Minister of the Interior,[1] by Mizuno, Lord of Wakasa, and Sakuma, Lord of Bigo, Town Magistrates of Osaka, who declare that it is the practice laid down by the lord Yutoku-In."[2]

[No. 53] *Disposition of Money-Loan Actions in Osaka.*[3]

"A Memorandum.

a. Days for Court-proceedings [as at present:]
Complaint-days:[4]
2nd, 13th, 22nd.
Trial-days:[5]
6th, 16th, 27th.
The above days shall be changed as follows:
Trial- and Complaint-days:[6]
2nd, 6th, 13th,
18th, 21st, 27th,

b. Actions for money-loans or unpaid purchase-money.

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1. These two were together in office as Town Magistrates of Yedo from 1797 to 1806. 2. The posthumous title of Yoshimune, the 8th Shogun, one of the few able possessors of that office after Iyeyasu; he abdicated in 1745. The famous Oka, Lord of Echizen, was Town Magistrate of Yedo under him. 3. As to the date of this, see note to No. 51, *ante*. 4. *Sosho-bi*. 5. *Kuji-bi*. *Sosho* and *kuji* have ordinarily no marked difference of meaning; but here *sosho-bi* seems to indicate the day on which a suit may be begun, and *kuji-bi* the day on which it is tried. 6. What the compound phrase means is not clear, unless it is that on any one of the six days a suit may be begun or a trial held. This is the more likely, as otherwise the 30-day rule below would not harmonize with the schedule.

No. 53. (1.) [The Complaint] shall be delivered back [to the plaintiff] with an indorsement appointing as the day of appearance the 30th day after the entry of action.

(2.) If on the appointed day [appearance is prevented] by illness, the day shall be postponed for 30 days more if notice of the illness is given: such a notice will be accepted twice, but even if it is given for the third time, a joint-pleading[1] will be held without fail, even if by means of a representative.

c. Mode of payment after joint pleading [and judgment for plaintiff.]

Amount of claim:	Term:
Less than 10 *kwamme*.....	60 days.
From 10 to 50 *kwamme*.....	150 days.
Over 50 *kwamme*.....	360 days.

If payment is not made within the term, a house-confinement of 30 days is to be ordered.

Note, that in each of the two Courts, if the debt is not paid within the 60, [150, or 360] days, the debtor is to be sentenced to hand-stocks confinement or to commitment to his village,[2] when he appears; but if his agent appears for him, alleging his illness as his excuse, an order shall be made, after sending to examine into the fact of the sickness, for house-confinement. The same proceedings are to be followed in the case [of a resident of] a feudal deputy's district.

(2.) If within the term the larger part of the debt is paid, a new term shall be appointed, equal in duration to the first.

(3.) If during the house-confinement above mentioned payment is not made, execution in bankruptcy is to be ordered.

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1. *Taiketsu*. 2. *Mura-azuke*. Compare *tokoro-azuke*, 3, (9), *supra*.

Note, that in such a case, the process must be carried out in the presence of the village officers and agents of both parties.

(4.) All family-belongings (with the exception of articles serving the personal use of the wife and children), house, residence-land, ricefield, and upland are to be subjected to execution.

(5.) Land subject to a hypothec[1] is to be handed over to the creditor holding the security.

(6.) If the bankrupt is a dependent in the household of another, the clothes and other movables of the debtor alone are to be taken on execution.[2]

(7.) If house, residence-land, ricefield, or upland has been put in pledge, it is to be sold, and the proceeds delivered to the creditors entitled to share, after the amount due as principal and interest has been subtracted and paid] to the pledgee; or else the land [without being sold,] may be forfeited[3] directly to the pledgee.

(8.) After an order of execution in bankruptcy has been made, no action against the bankrupt is to be taken; unless it is brought after he has again acquired means.

(9.) No action for a money loan or unpaid purchase-money is to be taken up after the lapse of 10 years [since the claim was in arrears.]

(10.) Minimum amount of claims for which action may be brought on pledges, credit sales, money loans, and cropping:

a. In actions by townsmen against villagers:

60 *momme* or more, in silver.
1 *ryo* or more, in gold.
5 *kwammon*, in copper or iron.

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1. *Kakiire-shomon.* 2. That is, nothing else on the premises than these, as the house and realty were another's. 3. *Nagasu.*

No. 53] *b.* In actions where both parties are villagers:

10 *momme* or more, in silver.
1 *bu* or more, in gold.
1 *kwammon*, in copper or iron.[1]

(11.) No action for the hire of theatre-boxes, or for wine or food there supplied, or kindred expenses, will be taken up.

(12.) Actions for unpaid purchase-money due more than 10 years are not to be taken up, whether private-payments[2] have or have not been made from time to time since the year of the sale, and in spite of the fact that less than 10 years has elapsed since the [last] payment on account was made.

(13.) Nevertheless, if there has been a running account between the parties, lasting down to within 10 years [before action began,] the payment of all purchase-money due more than 10 years before [and included in the account] shall be ordered.

(14.) If in a money-loan action the complaint is dismissed,[3] after the Court has indorsed[4] it, in consequence of some impediment on either side,[5] and afterwards, when the impediment is removed, a new action is brought on the same claim, the new action is to be taken up and adjudged even though the instrument of debt [shows

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1. For the coinage values, see Part I. Here 60 *momme* and 1 *ryo* are equivalent; but 5 *kwammon* is more than a *ryo*. 10 *momme* is one-sixth, and 1 *bu* one-fourth of a *ryo*, 1 *kwammon* being also one-fourth. It is easy to see why lesser sums were allowed in suits between villagers, such small amounts being of much greater consequence in village life than among the townspeople. Probably certain classes of transactions were customarily reckoned in certain coinages, and thus there might be no difficulty in making different rules for the different coinages. 2. *Uchi-watashi*, i. e., out to Court, without suit. 3. *Hiki-ageru* (withdrawn up). 4. *Uragaki*, 5. Such, perhaps, as temporary confinement, succession by an heir. etc.

the claim to be] more than 10 years old; provided the first action was instituted within 10 years after the claim fell due.

(15.) No interest is to be allowed in judgments for unpaid purchase-money, even though both parties state that they verbally agreed upon the payment of interest or that such a stipulation is recorded in their respective account books.[1]

(16.) Where in a house-pledge there is, besides the principal instrument, an instrument guaranteeing interest,[2] the claim is to be treated on the footing of an [ordinary] money-loan, and, in case of non-payment, execution in bankruptcy is to be ordered, in spite of the fact that the transaction is a house-pledge.[3]

(17.) In an action [for the transfer of property,] where earnest-money has been paid, and the seller delays the alteration of the land-register or the delivery of the goods, a summons shall be sent for his appearance on the second Court-day[4] thereafter ; requests for postponement on account of illness may be granted twice only. After a joint-pleading,[5] an order will be made for delivery of the goods or for alteration of the register, as soon as possible.

Note, that in altering the register the name [of the new owner] is to substituted.[6]

(18) In an action by a divorced wife for the recovery of a sum of money, not a part of her dowry, but still belonging to her before her marriage and since then spent by mutual agreement of husband and wife, payment may be ordered if there are any proofs [of the claim].[7]

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1. *Tsukekomi-cho.* 2. *Rigin-ukeai-shomon.* 3. This provision, to be understood, must be considered in connection with an important controversy about the nature of a pledge, the documents of which will appear in Part VI, in the section on "Pledge." 4. *Go-yo-bi.* 5. *Tai-ketsu.* 6. *Kiri-kayeru.* 7. Probably the action would be for the wife's share of the money or whatever it bought.

beg to ask you to let me know your opinion in an appended note.

9th month, 7th day (October 16, 1798).

Myura, Lord of Ise.

To Odagiri, Lord of Tosa.
Murakami, Lord of Higo."

2. *Enclosure.*

"(1.) Suppose that a debtor gives to his creditor an instrument reciting that as he has sold off all his property [to meet other pecuniary demands] he is unable to pay at the time, and promising to pay in full whenever his circumstances improve and he again acquires means. Afterwards the debtor dies, and his son, who succeeds him, acquires means to such an extent as to have a moderate income and be able to employ servants. The creditor learns this and brings suit against the son for the father's debt. Now should we rule that the instrument by which the father engaged to pay whenever he acquired means again has effect only for the lifetime of the father [1] and, going by the exact terms of the instrument, hold the son not liable,—without regard to amount of his property? Or is the son not to be exonerated?

Appended Note.[2]

'You put the case of one who has been obliged by his pecuniary needs to sell off all his property, and delivers to a creditor an instrument engaging to pay when he acquires means; the debtor dies, his son, the successor, acquires means enough to enable him to employ servants, etc., the creditor finds this out and sues for the father's

1. *Ichi* (one)-*dai* (generation)-*kagiri* (only). 2. These are probably by Odagiri, the Magistrate holding over.

debt. Our opinion is that the son ought to be held liable, if the terms of the instrument are clear [in guaranteeing payment in the above circumstances, and not merely expressing a hope of repayment]; for there is no reason why a son should not be liable for all transactions occurring in his father's generation. But whether the instrument is or is not clear as to whether payment was positively to be made in the circumstances mentioned cannot be determined except after inspection of it. So that we cannot give a final answer to your question.'

(2) Where a money-receipt[1] is produced as a proof [of a loan], should it be so regarded,[2] although it contains no year-date, but only the year's calendar-name,[3] month, and parties' seals and signatures, if the time thus indicated corresponds with the time of the transaction as stated by both parties? Should it be rejected, if it contains not even the year's calendar-name, but only the month? In this jurisdiction there are a number of creditors who have lost their principal-instruments[4] in the last fire, and are obliged to bring suit with only their receipt as proof of the debt.[5] I should be glad to learn about the practice in your Court.

Appended Note.

'You put the case of the principal-instrument being lost. I reply that a memorandum of receipt,[6] not con-

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1. *Kingin-uketori-sho.* 2. *Tori-mochiyuru* (take to oneself, adopt). 3. *Yeto.* For an explanation of the calendar system, see Part I. The *yeto* name, as ordinarily abbreviated, would fit one year in every twelve, and hence was by no means a certain indication of the date. 4. *Honshomon.* 5. Apparently a preliminary receipt was given by the debtor before the principal instrument was drawn up. 6. *Uketori-kakitsuke.*

No. 55] taining the year-date, but only the year's calendar-name and the month (or even the month only), can not be accepted as a proof; and no action brought on such a memorandum ought to be taken up; unless the defendant on examination admits positively that he incurred the debt, and his admission agrees with the plaintiff's allegations.'

Such are the inquiries which I desire to make. Though doubtless I am putting you to great trouble, will you kindly let me have your opinions on these points in an appended note?"

8. *Letter from one Town Magistrate to the other.*

"In the letter of Myura, Lord of Ise, he puts the case of a debtor selling off his property through pecuniary necessities, giving an instrument engaging payment whenever he acquired means, the debtor's son succeeding him and acquiring means enough to employ servants, etc., the creditor learning of this and suing him. Should the son be held liable, if the terms of the instrument are clear? Or should he be held not liable, on the ground that the instrument was effective only for the bankrupt's own life, and that therefore after his death, no action can be brought against the son, although it appears that he has acquired means? I should like to obtain some precedent.

Appended Note.

'My answer is that after due search I can find no precedent on the point you inquire about. But my opinion is that where an instrument is given engaging payment upon again acquiring means, even the son must be held liable. On the other points I quite agree with the decision of your own Private Session.

1st month.

Negishi, Lord of Bizen.'"

4. "The above decision was reached at a Private Session,[1] Kwansei, XI (Goat), 1, 21 (February 25, 1799), the Town Magistrate to send the appended replies [to Myura, Lord of Ise]."

[No. 56] *Loans from a Prayer-Fund.*[2]

An Action by the Kyogen Temple of Komagome, Yedo, against Hattori Shingoro, before the Lord of Bigo, Finance Magistrate.
Dated Anyei, IX (Rat), 4, 21 (May 24, 1780.)[3]

1. *Judgment of the Court.*

"The action brought by the Kyogen Temple, of Komagome, [Yedo], against Hattori Shingoro, for the sum of 90 *ryo*, 1 *bu*, advanced[4] to the latter, has been tried, and judgment is rendered[5] as follows:

The action is brought too late. Although there are said to have been several documents [showing the existence of the claim], they have never been renewed since the death of Shingoro's grandfather, and the assertion of the claim has been delayed until now; and as the burning of the seals of Shingoro's family since his grandfather's, as well as of a number of documents connected with the case, has thrown the matter into confusion,[6] and the existence of the claim is disputed, no order of payment can be made. It is ordered that a document [of submission] be handed up."

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1. *Uchi-za;* of the Town Magistrate's Court. 2. *Shido-kin.* See No. 1, 2. 3. Cited from "*Saikyo-dome.*" 4. *Yo-date.* 5. *Moshi-watasu.* 6. I. e., has made it impossible to determine whether the claim exists.

No. 56] 2. *Document of Submission.*[1]

"Document handed up.

During and since Horeki, XI. Serpent, (1761), Nakagawa Yoyemon, retainer of Sugiura Ichizayemon, advanced at different times to [the family of] Hattori Shingoro sums amounting to 90 *ryo*, 1 *bu*. The said Yoyemon died some years ago, and it is alleged that Myokyo, formerly known as Seki,[2] the widow of Yoyemon, in the last Ape year (1776) granted[3] by bequest[4] the above claim to the Kyogen Temple, the endowment being afterwards confirmed by a deed of grant,[5] through her relatives. On trial [of an action brought for its recovery], both parties and their relatives were summoned, and it was decided that if the advance had been made during or since Horeki or the lifetime of Shozaburo, grandfather of Shingoro, and instruments had been executed at that time, they ought to have been renewed;[6] but that, [as this had not been done] and no assertion of the claim had been made for so many years, it was now too late to sue, since the alleged endowment by Myokyo could not be proved by mere verbal statements and without an instrument of bequest, and since Shingoro pleaded that he had no recollec-

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1. This document, variously known as *age-shomon* (document handed-up), *uke-shomon* (document of acknowledgment or submission), etc., and here entitled "*sashi-age mosu issatsu no koto*," was an acknowledgment of the judgment, indicating the parties' submission, and seems to have served as a proof for future times estopping the parties from any gainsaying of the result of the litigation. It usually contains a recital of the history of the litigation, and does not seem to have been given in ordinary actions of no special length or importance. In the later Parts of this work will be found numerous examples. 2. On the death of a husband the widow often retired to a convent and changed her name. 3. *Kifu*; used of grants to temples by way of endowment. 4. *Yui-gon*. 5. *Yuzuri-jo*. 6. By the son or grandson of the original borrower.

tion of such a debt and the burning of theseals of several generations [of Shingoro's family], as well as of a number of documents connected with the case, had thrown the matter into confusion. No order for payment, therefore, could be made. We respectfully acknowledge the decision and herewith hand up this document of submission.[1]

Chikwaku, of the Kyogen Temple,
Plaintiff.

Mori Yasota, retainer of Hattori Shingoro,
Defendant.

To the Chamber of Decisions."

[No. 57.] *Apportionment of Money Advanced.*[2]

An Action by Ibei, of Kodzukabara Town, Senju, Bushu,[3] against Kinzayemon, renting the shop of Ubei, in Uragashi, Shinagawa Town, before the Lord of Shimotsuke, Finance Magistrate.

Dated Kwansei, XI (Goat), 6,11 (July 13, 1799).

1. *Consultation.*[4]

"From Suganuma, Lord of Shimotsuke.

Toshichi, servant and representative of Ibei (detained by illness), farmer, of Kodzukabara town, Senju, Toyoshima *kori*, Bushu, deputy's-district of Onuki Jiyemon, ...*Plaintiff.*

Kinzayemon, renter of the shop of Ubei, Uragawa, Shinagawa town ; and,

Jirozayemon, house-master, Block No. 2, Oyanagi, ward, Kanda district, [Yedo] .....*Defendants.*

The parties in the above action were summoned for the 7th day by indorsement, and trial was had. The plaintiff's statement was as follows :—

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1. *Uke-sho.* 2. *Shiokuri-kin.* 3. Musashi *kuni.* 4. The case is laid before the Chamber in this form by the trial judge.

No. 57] The plaintiff Ibei had for years frequented[1] the residence of Soma, Lord of Inaba, and had made advances[2] to him at various times. It came about that the officials of the Lord of Inaba instructed the defendant Kinzayemon, in association[3] with the plaintiff Ibei, to make advances for the household expenses of the Lord of Inaba for 4 years, i.e. from the 9th month of the Horse to the ensuing Cock year. Kinzayemon and the plaintiff had a number of consultations on the subject, and, after deciding to undertake the matter, they received from the officials of the Lord of Inaba an instrument containing the agreement as finally settled,[4] and addressed to the said Kinzaemon and Ibei. Among other provisions, it was agreed that the lenders were to receive, in consideration of their undertaking [to advance money] for the kitchen department,[5] 85,000 bales[6] of rice out of the tax rice, to be taken from the Lord of Inaba in the Horse year in the course of transportation to Yedo, after inspection of the number of *koku* at two places in the fief of the Lord of Inaba, in Oshu,[7] and at the port of Choshu, in Joshu;[8] to sell at that place the rice thus received, or, if they preferred, to transport it on a *takase*-vessel[9] to Yedo; to defray, from the proceeds of the sale, the expenses of the shipping officials of the Lord of Inaba during their stay in the

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1. *De-iri*; "coming and going;" the same word that is used to signify "dispute," "lawsuit." 2. *Shiokuri*. 3. *Kumiai*. 4. *Gi* (debate)-*tei* (settle)-*shomon*. 5. *Makanai-kata*; this term was probably employed conventionally, that the transaction might not appear to be for the lord's personal use; it would not have been consistent with his dignity to have his personal needs the subject of a transaction with a merchant. 6. *Hyo*; about 3, sometimes 4, bales made a *koku*; the value of 100 *hyo* might then have been 40 or 50 *ryo*. 7. Then including the *kuni* of Iwaki, Iwashiro, Rikuzen, Rikuchu, and Mutsu. 8. Hitachi *kuni*; a large fishing-town at the mouth of the Tone, on an extremity of land, which must be passed by all vessels bound to Yedo from the north. 9. A heavy vessel, of large carrying capacity.

port of Choshu; on its arrival at Yedo, [if it was not sold at Choshu,] to store it in any storehouse they pleased; and to make no advances for any other than the ordinary household expenses during the three years from the Goat year to the Cock year both inclusive;[1] [the Lord of Inaba, on his part, agreeing] to consult with them in every case as to the use to which the advances were to be put. This instrument was received by Kinzayemon and Ibei from the officers of the Lord of Inaba, with a memorandum-book for monthly-advances,[2] containing an engagement to repay the advances without fail by delivering the tax-rice[3] of Soma, as agreed in the final-instrument. After the contract was concluded for the advancements for the household expenses of the Lord of Inaba, they received two copies of an instrument addressed to them jointly, bearing the counter-seals of the Lord of Inaba, stating in substance that, upon the 35,000 bales of rice being delivered to them out of the tax-rice of the Horse year, they were to ship it as they pleased, and, calculating principal and interest of their advances, to pay themselves out of the proceeds. The plaintiff and the defendant Kinzayemon then consulted, and fixed the proportion of their advances at three-fourths for Kinzayemon and one-fourth for Ibei. Ibei employed as agent for the management of his share in the transaction the other defendant Jiroyemon, who had once been his household servant, and was at the time managing several transactions for him. During and since the 9th month of the Horse year Kinzayemon and Ibei had advanced to the Lord of Inaba 4,686 *ryo*, 2 *bu*, in the above proportions;

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1. The order was: Horse, Goat, Ape, Cock, the contract beginning in the first. 2. In this were to be noted the advances, the debtor signing by way of receipt, and the creditor keeping the book. 3. *Shu-no mai;* put-in rice, i. e., sent by the farmers as tax, for deposit in the lord's warehouse.

No. 87] and since the 11th month of the same year 16,870 koku out of the above 35,000 koku had been transported to Yedo, being put on sale at Yedo, at Choshu, and at Tsuga in Sashu,[1] and realizing the gross sum of 4,680 ryo odd, netting 4,242 ryo odd, after deducting 364 ryo odd, for the freight paid for kokusu-vessels to Tsuga, Choshu, etc., and other expenses. Out of these net proceeds Kinzayemon and Ibei again paid by mutual agreement to the Lord of Inaba the sum of 700 ryo, to be applied to the payment of other debts of his. As to the remainder of the proceeds, some 3,542 ryo odd, the agreement being to divide in the proportion of three to one, Ibei should have received one-fourth of the amount, or 885 ryo, 2 bu odd; but Kinzayemon,[2] after remitting 612 ryo, 2 bu, by way of instalment, failed to deliver the balance, in spite of frequent demands upon him. The fact that the defendant Jirozayemon, the agent of Ibei, was negligent in the matter indicates that the defendants were in agreement to injure the plaintiff and were guilty of improper conduct. The plaintiff has therefore brought the action for the purpose of obtaining a complete investigation of accounts and of getting payment of the amount due on his proportion of the proceeds.

[The plaintiff also says:][3] Kinzayemon, in his plea,[4] alleges that he, as known to Jirozayemon, [the agent of Ibei], before undertaking the joint-advances[5] with Ibei, was to advance, in the period from the 6th to the 8th month of the Horse year, the sum of 1,000 ryo [on his own account] to the Lord of Inaba, and had stipulated with the

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1. Sagami *kuni*. 2. It must be remembered that the shipping, etc., was attended to by Jirozayemon, the plaintiff's agent, and Kinzayemon. 3. This seems to be a kind of replication, after the defendant's plea had been filed. But perhaps this document merely states the general result of the whole examination of the parties. 4. *Moshi-tate*. 5. *Kumiai-shiokuri*.

latter's officials to be allowed to take payment out of the first proceeds of the above 85,000 bales of rice, so that the entire advance made by Kinzayemon [for which he had a lien on the rice-proceeds] amounted to more [than a sum equal to three-fourths of the joint advance]. But the plaintiff Ibei has never been informed of this by Jirozayemon, so that he knows nothing about it.[1] The plaintiff says that the tax-rice[2] was to be received by the two[3] jointly, in payment for their advances; that the sum of 700 *ryo* advanced to the Lord of Inaba, as aforesaid, out of the proceeds of part of the 85,000 bales was different from the alleged advance of 1,000 *ryo* by Kinzayemon, because it was advanced [by Kinzayemon][4] with the consent of both parties, after they had undertaken to make the joint-advances; that, although the case might be different if the whole 85,000 bales had been sent to Yedo and the advances made up to that time had been wholly paid,[5] [yet in fact only a part was sent], and of that part some was lost by shipwreck, so that the entire proceeds of the sale were insufficient to repay the joint-advances made up to that date; that if these proceeds were to be regarded as subject to sundry liens for advances made from all quarters to the Lord of Inaba, there would be very little left to apply to their joint-advances, and that it would be impossible to make further advances; and Ibei, therefore, because the 85,000 bales aforesaid were intended for the payment of their advances, demands of Kinzayemon the delivery of one-fourth of the proceeds of the rice,

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1. And therefore it cannot affect him. 2. *Nengu-mai.* 3. The plaintiff and Kinzayemon. 4. It was said before that the two agreed to make this advance of 700 *ryo*. But it is plain, from the fact that the deduction of 700 *ryo* went entirely to Kinzayemon's benefit, that this advance was made on his sole account. The previous statement must therefore have been a careless mode of expression. 5. That is, in that event he would have made no objection.

[illegible]

[illegible]

But in the 11th month the officials of the Lord of Inaba then instructed[1] [them] to make this extra advance on account of certain extraordinary household expenses. But Kinzaemon, as well as Ibei, did not desire to risk any extra advances, and declined. The officials, however, [persisted,] stating that they had incurred a loan in another quarter and had agreed to pay it out of the tax-rice on arrival in Yedo, and declaring that the desired advance could be repaid from the proceeds of the 35,000 bales to be transported to Yedo; so that it was impossible to refuse. This 1,000 *ryo*, then, was by this agreement [with the officials] to be repaid from the rice-proceeds, and accordingly Kinzayemon gave notice of this to Jirozayemon, Ibei's agent, who requested him to take it out of the tax-rice on its arrival in Yedo. This Kinzayemon agreed to do; and, after reporting the fact to the officials, he delivered to Ibei 612 *ryo*, 2 *bu*, out of the rice-proceeds, as the one-fourth which was to be Ibei's share. The net proceeds, taking out sundry expenses, of the various amounts of tax-rice brought to Yedo were 3,542 *ryo* odd, of which one-fourth would be 885 *ryo* odd. But on deducting the 1,000 *ryo*, as by the agreement above-mentioned, and dividing the remainder according to proportion of 3 to 1, as agreed on for the repayment of the joint-advances, the sum already delivered Ibei would correspond very nearly to one-fourth of the net amount to be divided. There could therefore be no pretence that Kinzayemon had withheld from Ibei anything due him, since this deduction had been agreed upon between them. Kinzayemon can not see why Jirozayemon should

1. The language of the noble borrowers was that of dispensers of favors, and where the commoner-capitalist failed to see the attractions of this privilege, the language of command was often resorted to. In some respects one may compare the Jews and their loans in European feudal life.

No. 57] deny in ambiguous terms his knowledge of this [agreement for a deduction] or why Ibei endeavors to injure him by all sorts of unfair statements.

[The defendant] Jirozayemon pleaded as follows:—

The above allegations by Toshichi, representative of Ibei, are true [in the following particulars:] That Jirozayemon has formerly been a servant of Ibei; and that at the time of the transaction in question he lived in Yedo, but was managing several transactions for Ibei, and from the 9th month of the last Horse year, when Kinzayemon and Ibei undertook their joint advances for the household expenses of the Lord of Inaba, had acted as Ibei's agent in the matter. But he has entered into no agreement with Kinzayemon as to the contract [between Kinzayemon and the officials] that Kinzayemon should take the sum of 1,000 *ryo*, to be advanced by him between the 6th and 8th months of the same year,[1] from the first proceeds of the 35,000 bales of tax-rice received in payment of the joint advances, nor as to [first] providing for this additional advance by Kinzayemon in settling the shares due on account of the joint advances. The case might have been different,[2] if [the contract between Kinzayemon and the officials had been for] the taking out of this special advance, [agreed to be made] before the joint-arrangement[3] for advances had been made, after all the tax-rice had been received in Yedo and the joint advances had been taken out of the proceeds. But such not being the case, [the taking

1. The meaning cannot be, in this passage and in others referring to the point, that the sums were actually advanced in the 6th and 8th months, else there would have been no reason for the commands of Inaba's officials in the 11th month. The speakers are apparently referring to this loan merely as the one agreed to be made in those months or for those months. That was probably the period when the amounts became due which the loan was to meet. 2. That is, there would have been no objection. 3. *Kumiai*.

out of the special advance prior to the payment of the joint advances] was contrary to the provisions of the agreement between Ibei and Kinzayemon. The failure of Kinzayemon, moreover, to hand over the remainder due to Ibei over and above the 612 *ryo*, 2 *bu*, paid to Ibei as his one-fourth share, had caused Ibei to suspect Jirozayemon of abetting Kinzayemon in his scheme, a result very annoying to Jirozayemon.

Such were the statements of the several parties. A retainer of the Lord of Inaba was then examined and testified to the following effect. There was no reason why Kinzayemon should take out from the rice-proceeds the sum of 1,000 *ryo*, to be advanced in the 6th and 8th months of the last Horse year, before the satisfaction of the joint advances made for the household expenses of the Lord of Inaba during and since the 9th month of the same year from the 85,000 bales of tax-rice to be received on joint account by Kinzayemon and Ibei. The mere verbal statement by Kinzayemon that he told Jirozayemon of a contract [between himself and the officials] to take out first the amount of his advance, and got Jirozayemon's consent, cannot be accepted as proof, inasmuch as Jirozayemon declares that he never gave consent to this prior deduction of the 1,000 *ryo* from the proceeds of the 85,000 bales and as there is no provision for it in the contract for the joint advances. The witness declares that he submits to the judgment of the Court.[1]

The trial having elicited the above statements, [my decision is as follows]: The defendant Kinzayemon's allegation that there was an express agreement for the prior taking out of his own advance, agreed to be made before the joint undertaking by himself and Ibei, cannot stand, there being no proof; it rests merely on his own

1. A declaration frequently occurring at the end of a deposition, or stated as having been made by all the parties.

No. 57] verbal statement, and the final-instrument addressed to Kinzayemon and Ibei and received by them from the officials of the Lord of Inaba makes no mention of such an advance, but states only that the 35,000 bales of tax-rice were to be delivered to them, in consideration of their undertaking to make advances for the kitchen-expenses in the household of the Lord of Inaba. Furthermore, as both parties agree in stating that, of the whole amount of joint advances, three-fourths were made by Kinzayemon and one-fourth by Ibei, and as an entry of this proportion of 3 and 1 is also found in the payment-book[1] of each of the parties, a copy of which was delivered to the Lord of Inaba, this arrangement may be taken [as binding and] not merely as a friendly agreement not having legal effect,[2] even though it was a private[3] arrangement and not noted in the final-instrument. I therefore inquire whether the judgment shall be that the accounting for the proceeds of the 35,000 bales of tax-rice is to be settled on the basis of three-fourths and one-fourth; that, in case the proceeds are insufficient [to repay all the joint-advances], an application be made to the Lord of Inaba [by the parties to settle the deficiency]: and that the parties now proceed in amity and uprightness to settle the whole transaction ?

Year of the Goat,
6th month."

2. *Decision of the Chamber of Decisions.*

"In the action of Ibei, of Kodzukabara ward, Senju, Toyoshima *kori*, Bushu, in the deputy's-district of Onuki Jiyemon, for the illegal witholding of payment for advances

1. *Dashi-kindate-chomen*,—probably the book for monthly advances, already mentioned. 2. *Nakama-koto*. This seems to be the effect of the phrase. *Nakama* is a companion, intimate, and is the common term for co-members of a guild. 3. *Aitai*. See No. 1.

made for the household expenses of Soma, Lord of Inaba, in a joint-undertaking with Kinzayemon, the parties were summoned for the 7th day by indorsement, trial was had, and the following judgment rendered:

As it is clear that the two parties were to receive on joint account the tax-rice, the accounts shall be settled by dividing the proceeds in the proportion of the respective advances made, that is, taking respectively one-fourth and three-fourths of the net proceeds of sale undiminished by other deductions;[1] and the parties shall proceed with amity and uprightness to settle the whole transaction. A document of submission is also ordered. Notice of the judgment shall be given to Komiyama Yasaku, clerk of Onuki Jiyemon,[2] and to Watanabe Heijiyemon, retainer of Soma, Lord of Inaba.

Note, that as the case was laid before the Chamber by the Finance Magistrate, there is no complaint."[3]

[No. 58] *Building Advances.*

An Action by Yadayu, of Omote-demma Ward, Akasaka District, Yedo, against Chikwan, of the Tentaku Temple, before Nagate, Lord of Bigo, Town Magistrate.

Dated Bunsei, 1 (Tiger) 7, 21 (August 22, 1818.)

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1. *Moto* (original)-*daka* (amount); a careless phrase indicating the 3,542 *ryo*, the entire net proceeds. 2. The deputy in whose district the plaintiff lived. Notice of this sort was usually directed to be given, in order that the deputy or the official of the feudal lord concerned might know the exact issue of the case and might be prepared for any possible future disagreements arising out of the same matter. 3. Probably because the case was laid before the Finance Magistrate by the deputy, before whom it would be brought in the first instance. This note is added because, as will be seen, a judgment usually ends with an order to cancel the complaint and answers, and here no such formal documents existed.

No. 58] 1. *Consultation.*

(1.) Money-Loan Action.

Jubei, representative of Yadayu (detained by illness), house-holder of block No. 1, Omote-demma ward, Akasaka district, [Yedo] .....*Plaintiff:*

Chido, of the Tentoku Temple, a branch of Kissho Temple, in the Komagome district, [Yedo], of the Sodo sect ;[1] and

Itsuryo, of Denchū Temple, a branch of the above Tentoku Temple ; and

Manko, of Yokoku Temple, a branch of Ryosho Temple, in Yotsuya district, [Yedo], of the same sect .....*Defendants.*

(2). Money-Loan Action.

Kinshiro, representative of Kichiyemon (detained by illness), renter of the shop of Kinyemon, in block No. 1, Homminato Ward, (Yedo), ...*Plaintiff:*

Chido, of the above Tentoku Temple ;

and

Itsuryo, of the above Denchū Temple...*Defendants.*

The parties in the action [first] mentioned above were summoned and trial was had.

The plaintiff's statement was as follows :—

Yadayu was requested, 6 years before, in the year of the Ape (1812), by Chikwan, then incumbent of Tentoku Temple, to furnish[2] a sum of money for the purpose of meeting construction[3] expenses of the temple, and he thereupon advanced the sum of 700 *ryo*, taking on deposit as security the title deed of a town-residence belonging

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1. One of the Buddhist sects. 2. *Yo-date*, (supply, furnish). The nearest term for *yodate-kin* is "advances," which will be used throughout the case. 3. This covers both building and repairing.

to the temple. Of this sum 110 *ryo* were repaid on the maturity of the loan. Upon negotiation with Kingyu, of Denchu Temple, a branch of Tentoku Temple, as representative of Manko, the then incumbent of Tentoku Temple, who was detained by illness, the instrument of debt was renewed[1] for the remaining 590 *ryo*, with Manko, of Tentoku Temple, as debtor, and Keikyoku, of Yokoku Temple, and Kingyu, of Denchu Temple, as sureties. The plaintiff also made a new advance of 250 *ryo*, and received an instrument of debt bearing the seals of the above three temples.

Rubric.[2] When these instruments were taken from the parties and examined, it appeared that the first was dated Bunkwa, XI, (Dog), 10 (November, 1814), and read as follows: 'Whereas recent events have created special needs in connection with the maintenance of the temple, and, there being no other means of obtaining money, you have managed, at my request, to furnish it from your business-capital,[3] I shall faithfully keep it[4] for you. If there is any default on the part of the depositary, the joint-sealers will pay without fail.' The other document, bearing the seals of the same temples, was of the same date, and read as follows: 'You hereby deposit with me this educational fund,[5] for the use of your younger sister Ise, and I shall faithfully keep

1. This phrase, which has occurred frequently in the foregoing pages, is used where a debtor or the successor of a debtor makes out a new instrument in place of the old one,—a measure which diminished opportunities for dispute and prevented the operation of any prescriptive limitation. 2. Notes made probably by the judge himself, the main report being very likely the work of a clerk. 3. *Motode.* 4. *Azukari;* it was common to term an ordinary loan a deposit, not merely as a euphemism, but because deposits were treated in a manner favorable to creditors. 5. *Yo-iku* (bring up, educate)-*kin.*

No. 58] it for you. If there is any default on the part of the depository the joint-sealers will pay without fail.'

The plaintiff also received [with the first of the above instruments] a collateral instrument,[1] reciting the reasons for the renewal and engaging to pay without fail between the 3rd month of the Boar year (1815) and the 2d month of the Rat year (1816), in monthly instalments of 50 *ryo*, with interest at 1 *bu* per 50 *ryo*.[2] Of these loans no report was made by Tentoku Temple to the chief temple, Kissho, or to the district-temple.[3] The plaintiff, however, conceiving that the debts really attached[4] to Tentoku Temple, has frequently made demand for payment; and payment not having been made, he brought the present action against Chido, its present incumbent, and the surety-temples.

As to the second action, the plaintiff Kichiyemon says that 7 years ago, in the Ape year, 1st month (1812), he lent to Chikwan, the then incumbent of Tentaku Temple, the sum of 500 *ryo*, with interest at 1 *bu* per 25 *ryo*, receiving an instrument of debt which promised an accounting[5] twice a year, in the 7th and 11th months. Furthermore, in the same year, 4th month, he lent 200 *ryo* on a similar private agreement.[6]

Rubric. When these instruments were taken from the parties and examined, they were found to be, first, an instrument of debt for 500 *ryo*, with Chikwan, of Tentaku Temple, as depositary, and Korin, of Denchu Temple, as surety, dated Bunkwa, IX (Ape), 1 (February, 1812); and, second, an instrument for 200 *ryo*, bearing the seals of the above two persons, dated the same year, 4th month. These two instruments are

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1. *Soye-shomon.* 2. I. e., ½ per cent a month. 3. *Kumiai-tera.* See p. 28, note 1. 4. *Tsuki.* 5. *Kanjo*, i. e., paying interest. 6. *Taidan.*

worded in the same way, as follows: 'I shall faithfully keep the above sum for you. Payment shall be made without fail whenever it is wanted. Interest shall be at the rate of 1 *bu* per 25 *ryo* monthly, with an accounting twice a year, in the 7th and 11th months.' In neither is there a recital as to whether the debt is one attached to the temple[1] or is a personal one[2] [of the incumbent].

Payment not being made at maturity, a demand was made; but Chikwan fell ill and died, and Manko, [his successor,] retired, Kingyu becoming the incumbent of Tentoku Temple. Kingyu, on demand being made, unlawfully[3] refused to pay: whereupon Kichiyemon, who then resided in Iwabuchi post-town, brought action against Kingyu before Magaribuchi, then Finance Magistrate. But pending trial Kingyu was punished for an offence connected with another affair, and leave was given to the plaintiff to withdraw. Recently Chido succeeded to the incumbency, and this action was therefore brought against him to recover payment.

The defendant Chido pleaded as follows:—

If indeed such large sums had been received on deposit from Yadayu and Kichiyemon, as they asserted, and the joint instruments described above were given, a report ought to have been made to the chief temple, or else the seal of the district-temple ought to have been affixed. But neither of these things was done and, furthermore, the seal used was not that of their temple;[4] so that neither of the debts can be considered as attached to the temple. Moreover, the previous incumbent, Kingyu, who had been guilty of misconduct in borrowing such large sums of money in different

1. *Tera-tsuki*. 2. *Waga* (self)-*mono* (thing). 3. Lit., selfishly. 4. I. e., it was a personal, not official, seal.

No. 58] quarters that he could hardly remain in the benefice, had been sentenced to banishment to a distant island, and the benefice had been forfeited, and Chido, who had no religious association[1] with him, was chosen as incumbent by popular election[2] held by direction of the chief temple. So that, if he were to undertake the payment of the large sums [borrowed by his predecessors], the means of the temple would be exhausted. He therefore asks for exoneration[3] from all these claims.

Manko, of the Yokoku Temple, another of the defendants, pleaded as follows:—

He was formerly a disciple at Unryo Temple, in Takayama, of Hishu,[4] and afterwards became a "transferred disciple"[5] of Chikwan, at Tentoku Temple, and incumbent of Yokoku Temple. Chikwan died in the preceding Dog year, 2nd month (1814), and Manko, appointed in his will as his successor, was confirmed as such by the chief temple, and succeeded to the benefice, taking over[6] all the debts, as well as the furnishings attached to the temple. But Manko fell ill, and his illness became more and more serious, he entrusted Kingyu with the affairs of the temple, as well as other matters, during his illness; so that he had no

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1. *Horui*. See p. 89, note 2. 2. *Nin* (people)-*san* (elect). When an incumbent died or retired, the *danka* (parishioners)—every one was registered as a parishioner of some temple—chose some disciple or other religious associate of his as successor; but the choice (probably in all the sects) required confirmation by the chief temple. Very often some one was selected who had been nominated by the departing incumbent. 3. *Kamben*. 4. Hitachi *kuni*. 5. *Yori-deshi*. No one could become priest except by succession to one whose *horui* he had been. Hence, where an incumbent died and left his disciples masterless, they must form a similar connection with another priest, usually a *horui* of the deceased. One who thus comes as a disciple from (*yori*), another who has died is termed a *yori-deshi* or transferred-disciple. 6. *Hiki-ukeru*.

knowledge [of any transactions occurring during Kingyu's management]. Afterwards, in the 12th month of the same year, he filed a petition with the chief temple, asking permission to retire, and this petition was granted. Kingyu was appointed his successor, to whom he made over, according to the temple-regulations, all the debts and furnishings. Subsequently he recovered his health, and was re-appointed, in the last Ox year, 8th month (1817), to the incumbency of Yokoku Temple.

[The defendant] Itsuryo, of Denchu Temple, pleaded as follows:—

He cannot understand what reason justified Kingyu, the incumbent next but one before him, and Korin, five generations[1] before, to stand as surety for such large sums. Furthermore, the seal is not that of the temple. He therefore considers it an unjust burden to have been made a defendant in the case.

Rubric. It is said that the above Chikwan fell ill and died in the last Ape year, 2d month (1812),[2] that Korin fell ill and died in the same year, 9th month; and that Keikyoku, former incumbent of Yokoku Temple, went into retirement in the last Ox year, 7th month (1817), and is now suspended[3] and attached to Hosho Temple, Ushigome district, [Yedo].

Such were the allegations of the parties. My inquiry is whether the case shall be decided in the following manner:—

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1. That is, five incumbencies. 2. The date given above is the Dog year (1814). 3. *Zui-shin.* This seems to mean the state of a person who is forced into retirement as a punishment. It would differ from ordinary voluntary *inkyo* or retirement, in that the person might be reinstated in office, while the return from *inkyo* would be a very rare occurrence.

No. 59] The defendant Bion pleaded as follows :—

The loan in question was incurred in the 8th month of Bunsei, VIII, Cock (1825), by Yuzen, predecessor of Bion, as principal debtor, and Zenyemon, as surety. After the death of Yuzen the temple was without parishioners and without religious relationship, [1] and year by year its circumstances became more and more straitened, until finally, as no one would accept a transfer of the benefice,[2] it became a forfeited benefice,[3] and fell under the control[4] of the Zojo Temple ; until at length the defendant Bion, in the 12th year (Ox) of the same period (1829), was appointed incumbent. Bion had no knowledge of the loan in question, and regards himself as not bound to pay.

Now [before the present action was begun] another money-loan action had been brought before me against the said Bion, in the 8th month of the last Goat year (1835), by Jimpachi, renter of the shop of Yabei, in Block No. 9, Ta ward, Shiba district, [Yedo]; and, a similar plea being made to that action, and the residence of the surety not being known, the plaintiff had been given leave to withdraw, on the ground that payment could not properly be demanded from the present incumbent, the benefice having become forfeited on the death of the original debtor, and the present defendant having become

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1. *Mu-dan mu-yen.* That is, there were no parishioners to support it and no religious associates to succeed the deceased. 2. *Horui-yuzuri* (lit., transfer of the relationship). This "transfer of relationship" was the common mode of speech applied to the succession to a benefice. If the transfer was made during the lifetime of the withdrawing priest, it took the shape, in many or most cases, of a sale of the benefice (not in name, of course); and the poverty of this parish was a reason why, even if there had been a religious associate, he would not have cared to receive it as a gift, much less to buy it. 3. *Age-dera* (taken-up temple); perhaps "suspended" would express the idea equally well. 4. *Kwan-shu-mochi;* that is, its affairs were administered by the chief temple temporarily.

incumbent by virtue of no religious relationship.[1] But, on making further inquiries, I have learned that in two money-loan actions brought before my colleague, the Lord of Iga, in Bunsei XII, Rat (1828), by Jibei, house-owner, of Kata Ward, Komagome district, (Yedo), against Zenkyo, the temporary manager[2] of Hoju temple, with its committee[3] and parishioners and the district-temple,[4] payment was made in both cases by way of private settlement[5] pending trial. Of these actions before the Lord of Iga I did not know last year, [when the action was decided as above by me]; but now, on being apprised of them and on comparing the different actions, I perceive that, though in each case the fact of the forfeiture of the benefice existed, yet two opposite rules have been adopted for the same state of facts, as regards the propriety of ordering or not ordering payment. Such a result is quite undesirable; and, on further reflection, I concluded that the decision of the Lord of Iga, in ordering payment, was the correct one, for the following reasons. Though it often happens that a transfer of the benefice becomes impracticable, because the temple has lost its parishioners and then the benefice is forfeited, yet its creditors would be placed in a very unfair position if an order of payment were to be refused because of some regulation of the sect that in such a case the succeeding incumbent need not undertake payment of his predecessor's debts. The present case is distinguishable from the case where an order of payment is refused because a predecessor suffered forfeiture of estate. Moreover, it cannot be claimed that

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1. See note 2, p. 89 *ante*. 2. *Kwan-shu*. See Note 4, p. 238, *ante*. 3. *Sewa-nin;* these were a few of the parishioners, chosen by the latter to act with the priest in administering the secular affairs of the parish. 4. *Kumiai-tera*. The temples of a certain region were formed into a company (*kumiai*); and when a temple wished to borrow money for repairs, etc., it was necessary to get the counterseal of the parishioners and of the head temple of the *kumiai* (rendered "district-temple"). 5. By sanction of Court.

No. 59] the loan was a personal one of the incumbent alone, since it is expressly stated in the instrument of debt that the loan was to be applied to the use of the temple and since the seal is that of the temple.

However, as it appeared fairly clear that the defendant temple was in very straitened circumstances, I directed the parties to settle by amicable agreement, the plaintiff to release[1] some part of his demand, and the surety, Zenyemon, to afford some assistance. But the defendant temple insisted that it could make no payment at all; whereupon I summoned Zenkyo, now incumbent of Anritsu Temple, in the district of Zojo Temple, who had been temporary manager of the defendant temple in the suit brought against it before the Lord of Iga. On examination Zenkyo stated that the claim in that action (which was brought shortly after the death of Yuzen) had been privately settled by the temples which had gone as sureties, Hoju Temple itself not being able to pay. It would seem, on the whole, that a peremptory order of payment [by the surety] would hardly be proper in the present case, as the only surety is Zenyemon, and there is no additional seal of a district-temple or the like. Desiring, therefore, to establish a uniform rule for such cases (which we cannot suppose will not occur again), I now, with the approval of my colleague, beg to consult you, and ask your opinion as to whether payment should be ordered or not.

Year of the Ape,
2d month."

2. *Answer by the Temple Magistrate.*

"I have been informed of the substance of your letter. As to the rule of the Jodo sect, that no new incumbent should undertake the payment of a predecessor's debts [of which the chief temple has not been notified], I have several times been consulted by you and have

1. *Kamben.*

answered affirming that rule. But [its effect on the liability of the surety for such debt is still unsettled, and] as it is undesirable that there should be conflicting rules on the same subject, I have considered the matter again and have come to the following conclusion. Since the creditor has usually no knowledge of any such rule of the sect as the above, [the rule should at any rate not be extended to sureties for such debts], and it is proper, when an action is brought by him against a subsequent incumbent and the district temple standing as surety or against the parishioners and surety, and the temple charged as surety is proved to have acted as such, that payment should be made by the surety, by way of private settlement, even though the loan was incurred privately, without notice to the chief temple, and though the debtor's seal was not his formal seal.[1] However, as the above-mentioned rule of the sect was insisted on by the defendant to apply to the present case, I inquired of the managers of Zojo Temple,[2] giving the case in outline; and I enclose their answer. Now, in the action already brought before the Lord of Iga by Jubei, house-owner of Kata ward, Komagome district, against Zenkyo, temporary manager of Hoju Temple, and the surety, the surety-temple undertook the payment, Hoju Temple not being able. With this precedent before us it seems proper enough that Zenyemon, the surety in this case, should, if there be no doubt that he acted as such,[3] make payment, whether there is or is not the additional seal of the district-temple.[4] As to holding the present

1. *Jitsu-in;* this is used on formal occasions and for official purposes. *Ken-in* or *mitome* is used for informal purposes. 2. The chief temple of the sect. 3. The reference is to the ambiguity of the term *shonin*. See Part II, "Witness and Surety." 4. The question with the inquiring judge seems to be whether the surety can be held if the subsequent incumbent cannot, and whether some authorization of the loan is not necessary, such as the seal of the district-temple. The answer implies that the absence of the district-temple's seal cannot affect the surety's liability who goes as surety for the debtor

No. 59] incumbent liable, it would be proper, wherever due notice of the loan had been given to the chief temple through the district-temple, to require payment, so far as the circumstances of the temple permit it.[1] But it seems hardly desirable to make any absolute rule on this point;[2] and I think it would be better for you to consult me[3] whenever any specially difficult case arises.

Such is my reply to your question. I enclose a copy of the report from Zojo Temple.

Year of Ape,
3d month.
Hatta, Lord of Bichu."

3. *Report from Zojo Temple.*

Tempo, VII (Ape), 3, 16 (May 1, 1836).

"You have informed us that, although the regulations of the Jodo sect require that no subsequent incumbent should be liable for debts of a predecessor [not communicated to the chief temple], a regulation of which we have already informed you, yet, as the creditor usually has no knowledge of such a regulation, [the rule should, at any rate not be extended to sureties for such debts], and in your opinion, where an action for payment is brought against a subsequent incumbent and a district-temple as surety, or against the parishioners and surety, and the temple charged as surety is

personally, not for the temple; and that in the instances where the district-temple has sealed, it was acting as an ordinary surety, and hence an individual who goes surety, instead of the district temple, is to be held to the same liability.

1. The rule requiring notice was subsequently changed. See *ante*, No. 28, 2, Art. 35. It is to be noted that the answering judge insists on the necessity of notice, a point which the inquiring judge made little of. 2. Because, where the temple has become poor, it would not be just to put the whole load of debt on the new incumbent's shoulders. 3. Because the Temple Magistrate was the highest of the Three Magistrates, and should especially be consulted in ecclesiastical causes.

proved to have acted as such, payment should be made by the surety, by way of private settlement, where the subsequent incumbent refused to pay, even though notice had not been given of the debt to the chief temple through the district-temple. You requested our opinion on the subject.

We think that your opinion by no means conflicts with the rule of our sect. It is a rule of long standing with us that a subsequent incumbent should not be called upon to pay loans of a predecessor which were not communicated to the chief temple when contracted. But it does not affect the interests of the chief temple that the surety should, as you desire, be required to settle privately with the creditor on the fact of suretyship being established.

Such is our reply.

3d month.

Managers of Zojo Temple."

[No. 60.] *Money Loan.*

An Action by Kinsuke, of Susaki Village, Bushu,[1] against Toshichi and another, of Ofune-kuramaye ward, Fukagawa District, Yedo, before the Lord of Sado.

Dated Kokwa, V (Ape), 2, 4 (March 8, 1848).

1. *Consultation.*

"From Kusumi, Lord of Sado:

Kinsuke, dependant in the household of Sobei, elder of Susaki village, Katsushika *kori*, Bushu, in the deputy's district of Saito Kabei...*Plaintiff.*

Toshichi, renter of the shop of Kinjiro, in Ofune-kuramaye ward, Fukagawa district, [Yedo] .....*Defendant.*

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1. Musashi *kuni*, in which Yedo was.

No. 60. Summoned for examination:

Mosuke, renter of the shop of the five-men company,[1] in Shiwo ward, Reiganjima, [Yedo].

The above action was brought before me, a summons issued for the 7th day, and trial had. The plaintiff Kinsuke had formerly lived in Yokoyama-dobo ward, [in Yedo], dealing in sandals.[2] The defendant Toshichi was some years ago in the employment of Heibei, Kinsuke's adoptive father. That Kinsuke had lent certain sums to Toshichi was clear; but the case could not be determined without examining the above Mosuke, renter of the shop of the five-men company, of Shimo ward, Reiganjima, [Yedo], and he was summoned and examined.

The plaintiff Kinsuke pleaded as follows:—

The alleged loan to Toshichi was made under the following circumstances. Toshichi, in the last Dragon year (1844) joined in the contract, long held by Mosuke, for the cleaning of the canal passing under Kyo Bridge, and undertook half of the length to be cleaned, agreeing to contribute to the expense, the total amount of which was to be about 3,237 *ryo*. But, his available money not being enough, he informed Kinsuke and requested him to make a loan, showing the indenture[3] executed between himself and Mosuke, and agreeing that payment of principal and interest should be made from the Government-money[4] received from time to time in payment during the progress of the cleaning. The plaintiff then from time to time, beginning with the 12th month of that year, lent various sums to the defendant, sometimes taking an instrument of loan, sometimes getting the defendant's seal in an account-

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1. *Gonin-gumi tana.* That a *gonin-gumi* possessed property in common seems improbable; but this is the most natural explanation of this phrase. 2. *Setta*, a kind of straw sandal. 3. *Tori-kawase* (exchanged)-*shomon* (instrument); each gave a copy to the other. 4. *O-sage-kin* (money handed down from the authorities).

book.[1] But as the undertaking went on, the expense increased beyond the estimates, and the work began to go more slowly; and finally Mosuke, who had other undertakings of the sort on his hand and was pressed for money, proposed to the plaintiff and the defendant to take up jointly with him the cleaning-contract for the above place,[2] just as the work stood. The plaintiff was informed of this proposal by the defendant, and agreed to it, the arrangement being that those sums which had been lent up to that time to the defendant should, with their interest, be left as they were; and any moneys which might be received [from the Government] for the undertaking should be divided among them without caring for settlement of the loan-account.[3] In the 10th month of the next Serpent year (1845) a new indenture to this effect was made out by all parties, and Toshichi and Kinsuke entered upon the work. Kinsuke might have taken an active part with the others in watching the work, employing laborers, paying wages, etc.; but as the business was unfamiliar to him, he left all to the others. The cleaning went on; but after a time some spots were found where the difficulty of the work unexpectedly increased the expense, so that the original estimate of cost was exceeded; and at last the plaintiff and the defendant were obliged to withdraw from the undertaking, and Mosuke proceeded alone with the remainder and ultimately finished it.

The total amount of the advances made [by Kinsuke] in this undertaking was 1,920 *ryo*, 1 *bu* odd, and of

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1. *Han* (seal)-*tori* (take)-*cho* (book); a book kept by the seller or lender, in which entries of the sales or loans were made, the debtor signing the entry. 2. I.e., the portion already undertaken by Toshichi. 3. See the end of the Consultation for the construction put on these expressions. "Left as they were" means that they were to be regarded no longer as loans, but merely as Kinsuke's capital invested in the partnership undertaking. "Without caring for settlement" means that no settlement was to be made.

No. 60] this sum 945 *ryo* had been paid, leaving a balance due of 975 *ryo* odd. Toshichi, indeed, had also made some contributions [to the expenses of the joint undertaking before Kinsuke entered], but these were small. It would be unreasonable, were the plaintiff alone to be the sufferer. Toshichi had invariably evaded with profuse apologies his requests for payment, declaring that he was quite willing to pay, but could not until the accounts had been settled with Mosuke; and yet he continually delayed the settlement of that account. The plaintiff himself had borrowed from different quarters the amounts advanced [to Toshichi], and, being without excuse for his own creditors, had been obliged to sell even his house and furniture, and had become a dependent in the household of Sobei, a relative, of Susaki village, Bushu, where he now is. The plaintiff therefore demands a detailed account and the payment of all sums due,

The defendant Toshichi pleaded as follows :—

He had formerly been employed by Heibei, the adoptive father of Kinsuke. In the preceding Dog year (1838) he had left this position, and had entered the sandal business for himself, hiring the shop of Kinjiro, in Ofune-kuramaye ward, Fukagawa. Meanwhile Mosuke, renter of the shop of the five-men company in Shiwo ward, Reiganjima, had taken a contract for the cleaning of the canal flowing under Kyo Bridge; but the area to be cleaned was larger than he was able to undertake alone, and in the last Dragon year (1844) he had asked Toshichi to become his partner[1] and undertake half the length to be cleaned. The cost of the whole undertaking was to be 3,237 *ryo* odd. An indenture was drawn up between them, agreeing that whenever the Government-instalments should be paid, they should be divided between them. Toshichi thereupon advanced 250 *ryo* odd for the work,

1. *Ai* (together)-*shi* (do).

and then, not having the money himself, he applied to Kinsuke to furnish further capital. The loans began in the 12th month of the same year, sometimes an instrument of debt being given, sometimes the seal being affixed in an account-book. The agreement was that payment should be made, principal and interest, at each time that a Government-instalment was received. The work of cleaning was begun in the 1st month of the ensuing Serpent year (1845), but it progressed slowly, though several advances of money were made. At this juncture Mosuke, who had taken other contracts of the sort and was pressed for money, proposed that the defendant and Kinsuke should take the remainder of the Government-money, 782 *ryo*, pay 50 *ryo* due for hire of mud-scows, and take up jointly with him the cleaning-contract for the place already undertaken by Toshichi, just as the work stood. Toshichi informed Kinsuke of the proposal, and, a favorable reply being made, Mosuke gave notice to the authorities and obtained their sanction. The sums already borrowed by Toshichi, with the interest, were to be left as they were, the agreement being that whatever money might be obtained from the undertaking should be divided among the plaintiff, the defendant, and Kinsuke. The former having thus become the partners of Mosuke, a new indenture was made out on the 20th of the same month, and the work was entered upon by them.

Rubric. The above instrument was ordered to be produced, and read as follows:

'Indenture.[1]

Whereas the cleaning of the canal under Kyo Bridge has been undertaken by you, and one of us then agreed to undertake the cleaning of one-half the length, advancing his own share[2]

1. *Tori-kawase-mosu issatsu no koto.* 2. *Wariai.*

No. 60] of the expense, and since the work has been begun and during its progress the Government-money has not been sufficient and large amounts of money have been spent; Now therefore it is agreed between all parties that we shall receive the remainder of the Government-money, 782 *ryo*, pay 50 *ryo* due for the hire of mud-scows, and undertake the cleaning of the portion now remaining, and carry it on until completed and officially inspected; that we shall pay the wages of the bargemen, the expense of official inspectors' sheds and laborers' sheds, fees of superintendents, laborers' wages, etc., and shall make every effort to guard against delay; that we shall have no responsibility in regard to the two special places [left to your charge]; that on request we shall deliver to you your share[1] of any extra payments [of the Government-money] which we may obtain for specially difficult portions; and that you shall leave the pumps, scaffolding, and other apparatus just as they now are, the same to be restored to you on completion of the work. Acting under the agreement thus privately made between us, we shall complete the cleaning not later than the last day of the ensuing 11th year, putting on a sufficient number of men and boats; and if this proves impossible we shall endeavor to cause as little inconvenience as may be. In testimony of this we hereby exchange instruments of the above effect.

Kokwa, II (serpent), 10, 20 (Nov, 19, 1845).

Toshichi, renter of the shop of Kinjiro, in Ofume-kuramaye ward, Fukagawa.

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1. *Hai* (distribute)-*kin*.

Kinsuke, land-renter of Jutaro, in Yokoyama-dobo ward.

To

Mosuke, Esq."

The above instrument being drawn up, the plaintiff and the defendant became the partners of Mosuke. But in a short time difficult portions were found in the area to be cleaned, and the cost increased largely, until the amounts paid in by Kinsuke by the 11th month of that year amounted to 1,920 *ryo*, 1 *bu*; for the slowness of the work made it difficult to estimate the total cost of any portion beforehand. Moreover, as the time for completion named in the contract had now expired, the two, [Kinsuke and Toshichi,] were obliged to give up the undertaking, the remainder of the work being undertaken and ultimately completed by Mosuke. Of the above 1,920 *ryo*, 1 *bu*, 945 *ryo* in all has since been paid at various times to Kinsuke, and the amount left unpaid is 975 *ryo*, 1 *bu*. The above facts are admitted. But [there are reasons why the payment of this remainder should not be enforced]. Now that the plaintiff and defendant, after entering into the above contract and making out a new instrument in which they appeared as partners[1] [of Mosuke] (who appears to have taken advantage of their inexperience in such matters and knowingly included the most difficult places in the portion assigned to them) have given up the undertaking on account of their miscalculation of the expense, it is difficult to see why [Kinsuke] should make the claim that he does.[2] Of course the defendant occupies the position of a former servant of Kinsuke, and does not wish to appear guilty of a breach of the duty of devotion arising from that relation; but as his account with Mosuke is still

1. *Uchi-nakama.* 2. That is, if there was any Government money to divide, he might claim some of it; but there was none.

No. 60] Such were the statements of the parties, [and the Court reached the following conclusions]: It is clear that the plaintiff had lent various sums to Toshichi, taking sometimes an instrument of loan, sometimes the defendant's seal in an account-book. But when the new instrument was drawn up, by which both parties became the partners of Mosuke, and [it was stipulated that] these advances should be left as they were, and that any money which might be received by them from the Government for the undertaking should be divided among them on its completion, without caring for any settlement in regard to the above advances, this claim for the advances became merely a matter between themselves,[1] and was no longer to be regarded as a debt due from one to the other.

The parties declare that they have no fault to find with the proceedings as related above.[2]

Trial was held as above related. The parties disagree as to the validity of the claim, but it seems to me that the matter is one between themselves, and that the judgment should be that no order of payment should be made. I therefore consult you on the subject.

Year of the Ape,
2nd month."

2. *Judgment.*

"Kokwa, V (Ape), 2, 4 (March 8, 1848).
Before the Lord of Sado.

1. The idea is that as Kinsuke had now entered the undertaking as a partner, taking a partner's risks, his past advances should be regarded as advances on the partnership account. Each one put in what money he could get, and trusted to getting it back, not from the other partner as a borrower, but from the proceeds of the undertaking; the division being presumably according to the advances of each. 2. This phrase is customary in this place. It may mean that the summarized testimony was read over to the witnesses and was declared correct by them.

An action having been brought by Kinsuke, of Bushu, Katsushika *kori*, Susaki village, in the deputy's district of Saito Kabei, for arrears of a money loan of 975 *ryo*, 1 *bu* odd, alleged to be due from Toshichi, renter of the shop of Kinjiro, of Fukagawa, Ofune kuramaye ward, [the defendant] was summoned by a 7-day indorsement and trial was had. The judgment is that no further trial shall be had. It is plain that the plaintiff lent the above sum to the defendant, partly on instruments of loan, partly in the shape of book-debts. But when the new instrument was drawn up and the partnership was formed[1] with Mosuke, renter of the five-men-company's shop in Reiganjima, Shiwo ward, for the cleaning of the canal, the loan was left as it was, the parties agreeing that whatever moneys might be received for the cleaning upon its completion should be divided among them, and that no further account should be taken of the loan in question, the advances thus becoming a matter between themselves only. The parties should be directed to hand up an instrument [of submission].

Note, that as the case was brought up by the Finance Magistrate, there is no complaint."

[No. 61] *Money Loan.*

An Action by Keiun, of the Sairen Temple, Lower Ichibukata village, Bushu,[2] against Sentaro, of Hagiwara village, Washu,[3] and another.
Dated Kayei, II (Cock), 3, 21 (April 13, 1849).

1. *Consultation.*

"This action was brought before the Lord of Yamato, then Temple Magistrate, and, a first-seal summons having

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1. *Uchi-nakama ni naru.* 2. Musashi *kuni.* 3. Yamato *kuni.*

No. 61] been issued for the 21st of the 9th month of the last Ape year (October 17, 1848) as the day of appearance,[1] trial was had. Pending trial, however, the office was vacated by the above person, and the case, on coming before me, was again examined.

The plaintiff Keiun alleged as follows :—

He had deposited with one Hyoshichi, of Washu, Wada village, related to him civilly,[2] a sum of 20 *kwamme* in silver, which had been laid aside by him as a promotion-fund.[3] He was requested by Matabei, father of the defendant Sentaro, in the last Serpent year (1845) to lend him the amount for a short time and had sent his disciple Shimmyo to that place, and the latter, after negotiating with Matabei and Hyoshichi, had lent the sum to Matabei, taking a receipt from Hyoshichi. The loan was not paid at maturity, and demand was made several times. Meanwhile Matabei fell ill and died, and the plaintiff then went for payment to his son Sentaro, but, notwithstanding frequent demands, no payment has yet been made, and he has always some excuse or other; by all of which the plaintiff is greatly injured.

Sentaro pleaded as follows :—

He had no knowledge of any loan by Keiun to his father Matabei, and moreover he found on inspection that the seal on the alleged instrument of loan is not his father's; so that he cannot be liable.

The witness[4] Hyoshichi testified as follows :—

It is true that Keiun was born in Tsunoye village, in the same province as the witness, and is civilly related to him; that the witness was entrusted by Keiun with a sum of 20 *kwamme* in silver to keep for him; that

1. *Sashi-bi.* 2. *Zoku-yen.* The disciple and priest were related to each other religiously (see p. 89, *ante*); but the disciple's or priest's natural father or son was related to him civilly. 3. To pay any fees, etc., required. 4. *Hiki-ai-nin* (a person drawn in, i.e., one involved, but not as a party).

subsequently, in the last Serpent year, Keiun's disciple Shimmyo came to the witness and requested him to deliver over the money, announcing Keiun's intention to make the loan to Matabei as requested by him; that the witness immediately delivered it over and the loan was made [to Matabei], an instrument being taken [by the lender].

As the statements of the parties differed, other witnesses were called, and the above instrument was taken up [by the Court], inspected, and compared with the temple-registry[1] [of the defendant's father]. It then appeared that the seal of Matabei, as well as those of Genzo, of Taguchi village, and of others, (whose names the instrument bore], were not genuine. Further trial was had on this point. It appeared that the money said to have been lent to Matabei was really not received by him at all from Shimmyo, who, it appears, after receiving it, according to Keiun's intention, from Hyoshichi, turned it to his own use, forging an instrument of loan and deceiving Hyoshichi. Both Matabei and Shimmyo, however, are dead, and the exact facts cannot be ascertained. But it has been made clear by the trial that no loan was received by Matabei; and the plaintiff now thoroughly regrets having brought the action, proceeding, as he has done, on a mistaken idea and without having another consultation [with the defendant]. Hyoshichi also is now aware of his error; for he at first corroborated by his testimony the statements of Keiun, declaring that the money was undoubtedly lent [to Matabei] by Shimmyo, although the witness had had no other personal connection with the transaction than the delivery of the money to Shimmyo. He thoroughly regrets his culpable conduct, and earnestly desires the pardon of Sentaro. Sentaro, on his part, declares that he has no fault to find, now that the facts have been made clear.

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1. Because here the seals were to be found in authentic form.

[No. 61 For these reasons [the plaintiff and Hyoshichi] have asked leave jointly that the action may be withdrawn. Now Keiun and Hyoshichi would ordinarily merit some severity on account of their culpable conduct as above described. But leave has been asked to withdraw, and as there is no reason why it should not be given, should I confine myself to issuing a severe censure[1] and then grant leave to withdraw? I consult you on this point.

Year of the Cock,
3rd month, 21st day."

2. *Document of Submission.*

"Document handed up.

An action for a money-loan having been brought before you by Keiun, of the Sairen Temple, Bushu, Lower Ichibukata village, against Sentaro, of Washu, Hagiwara village, and another,[2] witnesses were summoned and the trial had.

The plaintiff Keiun alleged as follows: He had deposited with one Hyoshichi, of Washu, Wada village, related to him civilly, a sum of 20 *kwamme* in silver, which had been laid aside by him as a promotion-fund. He was requested by Matabei, father of the defendant Sentaro, in the last Serpent year (1845) to lend him the amount for a short time, and had sent his disciple Shimmyo to that place, and the latter, after negotiating with Matabei and Hyoshichi, had lent the sum to Matabei taking a receipt from Hyoshichi. The loan was not paid at maturity and demand was made several times. Meanwhile Matabei fell ill and died and the plaintiff then went for payment to his son Sentaro; but, notwithstanding frequent demands, no payment had yet been made, and he has always some excuse or other; by all of

1. There were two degrees of censure (*shikari*): 1st, censure. 2nd, severe censure (*kitto shikari*). 2. This person, Kiyemon, appears below in the list of parties.

which the plaintiff was greatly injured. Sentaro pleaded as follows: He had no knowledge of any loan by Keiun to his father Matabei, and moreover he found on inspection that the seal on the alleged instrument of loan was not his father's; so that he could not be liable. The witness Hyoshichi testified as follows: It was true that Keiun was born in Tsunoye village, in the same province as the witness, and was civilly related to him, that the witness was entrusted by Keiun with a sum of 20 *kwamme* in silver to keep for him; that subsequently, in the last Serpent year, Keiun's disciple Shimmyo came to the witness and requested him to deliver over the money, announcing Keiun's intention to make the loan to Matabei as requested by him; that the witness immediately delivered it over and the loan was made [to Matabei]. Further trial was had. It appeared that the money said to have been lent to Matabei was really not received by him at all from Shimmyo, who, it appeared, after receiving it, according to Keiun's intention, from Hyoshichi, turned it to his own use, forging an instrument of loan and deceiving Hyoshichi. Both Matabei and Shimmyo, however, are dead, and the exact facts cannot be ascertained. But it has been made clear by the trial that no loan was received by Matabei; and the plaintiff now thoroughly regrets having brought the action, proceeding, as he has done, on a mistaken idea and without having another consultation [with the defendant]. Hyoshichi also is now aware of his error; for he at first corroborated by his testimony the statements of Keiun, declaring that the money was undoubtedly lent [to Matabei] by Shimmyo, although the witness had had no other personal connection with the transaction than the delivery of the money to Shimmyo. He thoroughly regrets his culpable conduct, and earnestly desires the pardon of Sentaro. Sentaro, on his part, declares that he has no fault to find, now that the facts have been made clear. For these reasons leave

No. 61] to withdraw was asked for and has been granted. Now, as for Keiun and Hyoshichi,—Keiun, intending to lend to Matabei, father of Sentaro, of Hagiwara village, in the same province, the sum of money which he had deposited with Hyoshichi, of Wada village, Washu, entrusted the matter to his disciple Shimmyo, who on receiving it from Hyoshichi, did not hand it to Matabei, but kept it for himself, forging an instrument of loan. Nevertheless Keiun, supposing that the loan had really been made, and feeling impatient at getting no payment in answer to his demands, prematurely brought action, without having, [as he should have had], one more consultation [with the defendant]. As for Hyoshichi, he at first corroborated with his testimony the statements of Keiun, declaring that the money was undoubtedly lent to Matabei, although the witness had had no other personal connection with the transaction than the delivery of the money to Shimmyo. These two, therefore, would ordinarily merit some severity on account of their culpable conduct; but as they have asked for leave to withdraw, they are only to be severely censured.

Such being your decision, we all respectfully acknowledge it, and herewith hand up our document of submission.

Kayei, II (Cock), 3, 21.

Keiun, of the Sairen Temple, New Shingon sect, Red-Seal land,[1] in Lower Ichibugata village, Tama *kori*, Bushu, in the income-fief of Nagasawa Naiki .....*Plaintiff*:

Ibei, headman, representative of *Sentaro* and *Kiyemon*, farmers, of Kagiwara village, Uda *kori*, Washu, in the deputy's district of Ishiwara Seizayemon .....*Defendants*;

Zenzo, farmer, of the above Hagiwara village, representative of *Moshichi*, elder, and *Kibei*,

1. *Go-shu-in-chi*; the Shogun's red seal was used in grants of tax-exempt land, of which temples were the most frequent beneficiaries.

farmer, of the above Hagiwara village, and of *Chosuke*, headman, and *Jinnosuke*, elder, of Upper Taguchi village, the same *kori*, in the deputy's district of the above Seizayemon ..... *Witnesses*;[1]

Sangoro, *Yogoro*, *Jinshiro*, representatives of *Kisuke*, of the same village.....*Ditto*;

Kiyemon, farmer, of Tsunaye village, Shikigami *kori*, the same *kuni*, in the fief of Oda, Lord of Tango .....*Ditto*;

Hyoshichi, farmer, of Wada village .....*Ditto*;

Seibei, farmer, of Higenashi village, Yamabe *kori*, the same *kuni*, in the fief of Todo, Lord of Idzumi .....*Ditto*;

Kokuryo, disciple and representative of Kikuryo, of the Soyu Temple, Yuzu Nembutsu sect, in the above Hagiwara village .....*Ditto*;

To the Chamber of Decisions.

I also have appeared and made acknowledgment of the above judgment, and herewith affix my official seal.

The Proclamation-chief[2] of the Shimpuku Temple."

[No. 62] *Money Transaction.*

An Action by Kumazo, of Yashu,[3] Kamma village, against Gibei, of the same *kuni*, in the Ashikaga New-land,[4] Lower Town.

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1. It is in the Japanese idea not at all improper for a witness to have a representative. Even to-day the lawyer may testify in Court on behalf of his client. 2. For this officer, see Part. I. Here the Shimpuku temple is probably the head-temple of the district, to which the plaintiffs belonged, and the above officer would have the duty of keeping a record of all lawsuits affecting temples within his district. 3. Shimotsuke *kuni*. 4. *Shinden*. At some previous epoch this district had been reclaimed for cultivation, and was popularly known by the above name.

No. 62] Dated Kayei, II (Cock), 4, 13 (May 5, 1849).[1]

1. *Consultation.*

"From Ikeda, Lord of Harima.

The above action[2] was brought before Makino of Sunshu,[3] then Temple Magistrate and, a summons having been issued for the 13th of the 2nd month of the year before last (Goat) as the day of appearance, trial was had. Pending trial, however, the office was vacated by him, and the case, on coming before me, was again examined.

The plaintiff Kumazo alleged as follows :—

He had been accustomed every year, in the intervals of agriculture, to journey to Sendai to sell cloth, and had often been accompanied by his eldest son Sakujiro and his second son Ichijiro. But the plaintiff gradually found himself less and less able, by reason of his years, to make the long journey. Unwilling, however, on account of their youthfulness and inexperience, to send his two sons alone, he requested the defendant Gibei, a relative of his, who was engaged in the same business, to take charge of his books and continue supplying his customers for him, promising 10 *ryo* a year for his travelling expenses. This arrangement made, Gibei was sent for the first time in the 6th month of the last Hare year (1843), and was accompanied by Sakujiro and the other son. He returned to the village in the 7th month of the same year. They set out again in the 2nd month of the following (Dragon) year, and returned in the 3d month of the same year; on this occasion all three were to have gone again, but Ichijiro, on account of misbehavior, was kept at home, and Sakujiro alone accompanied Gibei. The method of keeping their books was

1. Cited from "*Saikyo-dome.*" 2. The copyist states that he has omitted the list of parties, as it is given in the later document. 3. Sunshu was Suruga *kuni*. Here the words "Lord of" are omitted from the full title.

to close the accounts of each year in the year following; and accordingly they went over the accounts of the above Hare year (1843) in the spring of the Dragon year (1844), and balanced the receipts and expenditures.[1] Subsequently, in the 6th month of the Dragon year, Gibei alone was sent out, Sakujiro being engaged in some other occupation; and he returned in the 7th month of the same year. He was afterwards sent alone several times; and during his trip of the 9th month of the ensuing Serpent year (1845) Sakujiro fell ill and died, in the 10th month. Now the accounts for the preceding (Dragon) year should of course have been gone over in the spring of that Serpent year; but the plaintiff, not once distrusting Gibei, who was a relative of his, and believing that he could learn all that was necessary from Sakujiro, who had chiefly concerned himself with the business, allowed the accounting to be postponed, as he was at the time occupied with other undertakings. After Sakujiro's death he for the first time notified Gibei, on his return to the village, that he was ready to examine the accounts from the Dragon year onwards. But Gibei, who had kept the books in his possession during the two years, Dragon and Serpent, failed to return them to the plaintiff, notwithstanding his requests. The delay continued, on one or another pretext, until finally the books were handed over in the 1st month of the ensuing Horse year (1846). On a close inspection the plaintiff found on balancing the receipts and expenses, that a deficit of 641 *ryo*, 1 *bu*, 2 *shu*, [in gold and silver], and 2 *kwan* 700 *mon*, in small money, was due from[2] Gibei. Since then, demand has several times been made to him for payment, but he has done nothing at all by way of satisfaction, always offering some plausible excuse or other; so that finally the plaintiff has been obliged to bring this action. During the trial

1. *De-iri* (out-go and income). 2. *Hiki-ai.*

No. 62] witnesses have been summoned from time to time and all the accounts have been compared. The greater part has been made satisfactory, except a sum of 250 *ryo* collected from customers in Sendai, in the said Dragon year. As to this, Gibei pleads that he sent the above money, on the 5th day of the 7th month of that year, during his stay in Sendai, to Shichizayemon, the head of his main family line,[1] in the same *kuni*, Ashikaga, the town of Yoko, by whom it was received on the 22d of the same month; and that a record of this was made in the books of the plaintiff; and that the defendant on his return to the village, delivered the money and the account-book to Sakujiro. [As to the detention of the account-books: the defendant claimed that it was sufficient to say that] after the above occurrence entries were made by Sakujiro in his own handwriting, in the books of that year, of some money transactions of the spring of the [following] Serpent year; for if the books had in fact been retained by the defendant from the Dragon year onward no such writing would have been found there. But it may be that these entries were made by Sakujiro while in Gibei's house on one of the visits which he paid him before his death. Furthermore, [as to the above 250 *ryo*], Gibei alleges that, when he delivered the money to Sakujiro, Ichijiro was present also. But Ichijiro, who died the year before last (Goat), said in his lifetime, when asked about this, that he knew nothing about any settlement of that item. The plaintiff acknowledges that the trial has shown that he was in the wrong in suspecting and charging Gibei with unfaithfulness in some of the transactions, and that he was negligent in entrusting Sakujiro with his [home] business (although he had requested Gibei to take charge of the outside trade for the very reason that Sakujiro was too young), and also in delaying the

1. *Hon-ke.*

accounting. But he is unable to feel perfectly satisfied as to Gibei's dealings, and he therefore hopes that further trial will be had.

The defendant Gibei pleaded as follows :—

He had been engaged in selling cloth, during the intervals of agriculture, and at the request of the plaintiff he had made journeys to Sendai, either alone or in company with sons of the plaintiff, for the purpose of assisting him in his business. From the 6th month of the last Hare year and onwards this had occurred several times, and he had received 10 *ryo* a year for traveling expenses. The above facts are true, as related by Kumazo. When the action was tried which Kumazo brought for the sum of 641 *ryo*, 3 *bu*, 2 *shu*, and 2 *kwan* 700 *mon* in small money, alleged to be due from the defendant for receipts from customers in Sendai during his journeys there in the last Dragon and Serpent years, and the accounts were all compared, Kumazo declared that out of this amount a sum of 250 *ryo*, received from customers in the said Dragon year, was still due. But this sum, it had been agreed with Sakujiro, was to be delivered to Yabei, of the Kyo House, their regular courier, to be transmitted to Shichizayemon, the head of the main family line, at Ashikaga, in the same *kuni*. He therefore delivered it to an agent of Yabei in Sendai on the 5th of the 7th month of the Dragon year, setting out thence himself on the 6th, and returning to the village, after visiting several places, on the 16th of the same month. Subsequently he was notified on the 22nd of the same month that the money had reached Shichizayemon, and he received it from the latter and delivered it on the 29th to Sakujiro, with an account-book kept in his own hand. Ichijiro was at the time present and ought to have had knowledge of the fact. The receipt of the cash was also entered at the time in the books of Kumazo. Furthermore, Kumazo's assertion that the defendant had kept possession of the account-books of the Dragon and Serpent years is not

No. 62] supported by the facts; for in the above book, which is that of the Dragon year, there are entries in Sakujiro's hand of money transactions occuring in the spring of the ensuing (Serpent) year. The fact is that, according to report, Ichijiro and even Sakujiro were not at all well conducted, and it seems not unlikely that this money was spent in carousing and other pleasures by those two, and that Ichijiro, upon the death of Sakujiro (of which he was really glad), craftily prevailed on Kumazo to take his present course, Ichijiro's intention being to get the defendant out of the way and obtain full charge of the outside business. It is unreasonable on the part of Kumazo to make the serious charge that there is still a sum due from the defendant, and that the accounts have not been straight since Sakujiro's death, in view of Kumazo's negligence in delaying the examination of the accounts during Sakujiro's lifetime.

The witness Shichizayemon testified as follows:—

He carries on the business of cloth-selling in the intervals of agriculture; and Gibei's family is a branch [of the witness's family]. He had heard that Gibei was accustomed to travel to Sendai, on the business of Kumazo, either alone or in the company of Sakujiro and Ichijiro, Kumazo's sons, and had made the journey several times since the 6th month of the last Hare year. The witness also had customers in the same place; and it had for years been his practice, whenever a remittance of money was necessary, to make it through the courier Yabei, of the Kyo House. Sakujiro also was accustomed to remit money in the same way (thinking other couriers less safe), to be received by the witness when brought by Yabei. This being the general custom, the witness received from Gibei, then on his travels, the sum of 250 *ryo*, on the 22nd of the 7th month of the Dragon year; and he delivered it to Gibei on the 29th of the same month, on his return to the village.

Now, none of these statements can be accepted as completely proved. But we certainly cannot believe the statement

of the plaintift, at whose request Gibei travelled to Sendai, in Oshu, several times since the last Hare year, to carry on his trade for him, that there is an unpaid residue of 250 *ryo*, collected from customers in the Dragon year, due from the defendant; for [the defendant's statement] that the money was paid into the proper hands after his return to the village is corroborated by the testimony of Shichizayemon, of Yoko town, Ashihaga, in the same *kuni*, and furthermore there is in the cash-book[1] delivered to the plaintiff by Gibei at that time an entry of its safe arrival. It is furthermore unreasonable for the plaintiff to assert the existence of this residue when he had [carelessly] entrusted all his pecuniary affairs to Sakujiro, the very person whose youth was the reason for requesting Gibei to accompany him on the journeys. Moreover, in the account-book of the Dragon year, said to have been for some time kept back by the defendant, are entries in the hand of Sakujiro of some pecuniary transactions in the following Serpent year; so that the statement that the book was not received by the plaintiff before that time cannot be accepted. Certainly it must be said, as to the manner in which his books were kept, that if it was customary to settle up the accounts of one year in the year following, he should have made such an examination of the accounts. His negligence in leaving matters in Sakujiro's hands because of other business and in delaying the examination of the accounts was such that we cannot accept his assertion as to this balance due, for it was set up only after the death of Sakujiro and rested on mere suspicion.

Trial having been held as above, the parties declared that they have no fault to find.

The result of the trial was [the testimony] above recorded. The plaintiff's claim being apparently without foundation, I think the judgment should be that no further

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1. *Kin-gin-deiri-sho.*

No. 62] trial be had, as the above testimony appears to require. I therefore consult you.

Year of the Cock,
4th month."

2. *Document of Submission.*

"Document handed up.

An action has been tried in your Court for the recovery of money due between Kumazo, of Yashu, Kamma village, and Gibei, of the same province, Ashikaga Newlands, Lower Town.

The Court certainly cannot believe the statement of the plaintiff, at whose request Gibei travelled to Sendai, in Oshu, several times since the last Hare year, to carry on his trade for him, that there is an unpaid residue of 250 *ryo*, collected from customers in the Dragon year, due from the defendant; for [the defendant's statement] that the money was paid into the proper hands after his return to the village is corroborated by the testimony of Shichizayemon, of Yoko town, Ashikaga, in the same *kuni*, and furthermore there is in the cash-book delivered to the plaintiff by Gibei at that time an entry of its safe arrival. It is furthermore unreasonable for the plaintiff to assert the existence of this residue when he had entrusted all his pecuniary affairs to Sakujiro, the very person whose youth was the reason for requesting Gibei to accompany him on journeys. Moreover, in the account-book of the Dragon year, said to have been for some time kept back by the defendant, are entries in the hand of Sakujiro of some pecuniary transactions in the following Serpent year; so that the statement that the book was not received by the plaintiff before that time cannot be accepted by the Court. Certainly it must be said, as to the manner in which his books were kept, that if it was customary to settle up the accounts of one year in the

year following, he should have made such an examination of the accounts. His negligence in leaving matters in Sakujiro's hands because of other business, and in delaying the examination of the accounts, was such that the Court cannot accept his assertion as to this balance due, for it was set up only after the death of Sakujiro and rested on mere suspicion.

The Court has therefore ordered that no further trial be made. We all respectfully acknowledge this, and herewith hand up our document of submission.

Kayei, II (Cock), 4, 13.

Wakashichi, representative of *Kumazo*, farmer, of Kamma village, Aso *kori*, Yashu, fief of Ii, Steward of Palace-Cleaning .....*Plaintiff*;
with the representatives of the village officials.[1]

Gibei, farmer, of Lower Town, Ashikaga New-lands, the same *kuni*, fief of Toda Takejiro.....*Defendant*;
with the representatives of the village officials.

Shichizayemon, farmer, of Yoko Town, Ashikaga New-lands, the same *kuni*, fief of the same person...*Witness*;[2]
with the representatives of the village officials.

To the Chamber of Decisions."

[No. 63] *Money Loan.*

An Action by Katsu, widow of Seibachi, of Shimosa *kuni*, Kemmikawa village, against Jingobei, of the same village, and 54 others, before the Lord of Sado.

Dated Kayei, II (Cock), 7 (August, 1849).

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1. *Mura-yakunin sodai*; the village officials should have attended as vouchers of the parties The names of the officials have been omitted by the copyist. 2. Lit., summoned for examination.

No. 63] 1. *Consultation.*

"From Kusumi, Lord of Sado.

Action for a money loan, by Katsu, widow of Seihachi, Shimosa *kuni*, Kemmikawa village, against Jingobei, of the same village, and 6 others.[1]

This action was brought before me, and, a first-seal summons being issued for the 4th day of the 2nd month of this year as the day of appearance, trial was had. Pending trial Jingobei and 5 others of the defendants settled the claim privately, and an instrument of discharge[2] in due form was filed. But one of the defendants, Shozayemon, of Katsuta village, in the same *kuni*, declared that he had no such debt as that for which suit was brought. He maintained that the seal on the instrument [offered by the plaintiff] was not his. The plaintiff, on examination, claimed that the instrument was one which had been received by her late husband Seihachi for a loan [to Shozayemon], and there was no reason to suppose that the seal was not genuine; that the defendant's assertion was merely an excuse invented by him and the surety to avoid payment; and that, as many other loans had been made by Seihachi and instruments taken, all of which had been paid on demand, it was very strange that Shozayemon alone should raise such a plea. During these proceedings an interpellation[3] was filed by Shoshichi, son of Shozayemon, stating that, whereas an action for a money loan had recently been brought by Katsu, widow of Seihachi, against his father Shozayemon, the alleged sum was one which had been borrowed for him, [Shoshichi,] of the said Seihachi in his lifetime, by Jinsuke, of Koushibashi village, in the same *kuni*, and others, Shoshichi being at the time

1. The discrepancy between this figure and that above can only be accounted for by supposing that the representatives were 6 in number. 2. *Sumi-kuchi-shomon.* 3. *Kake-komi* (running in, handed in irregularly)-*so* (complaint, proceeding).

unable to pay a sum lost in gambling games entered into by him at the persuasion of those persons; and that, as Seihachi had informed him that he would lend it only in the name of Shozayemon as debtor, Shoshichi had reluctantly executed an instrument, for 28 *ryo*, 2 *bu*, in the name of Shozayemon, and delivered it [to Seihachi], without the knowledge of Shozayemon. This sort of a transaction being prohibited by law and too important to be overlooked, Shoshichi was examined and testified as follows :—

He is a horse-doctor, and, when in the last Dragon year he went to a neighboring village to do some doctoring, he met on the road Jinsuke, of Koushibashi[1] village, and stopped with him to visit Yasugoro, of Yokoto village, in the same province. There were there Goroyemon, of the witness' village, Kumezo, of Yokoto village, Kanjiro, of Kemmikawa village, and some others. After being entertained with wine and viands, the witness was induced by them to take part in a gambling game. At the end of the second game he was told by them that he was in debt for 24 *ryo*, 2 *bu;* but, as he did not have that sum with him, he borrowed it, through the intervention of Goroyemon, Kanjiro, and the others, from Seihachi, of Kemmikawa village, who was said to be in the habit of lending money to different people. But, as he was told that the instrument must bear the name of his father Shozayemon, he reluctantly executed an instrument in the latter's name, without his knowledge, and gave it [to Seihachi]. No money, however, was received by him at the time. Subsequently, in the 8th month of the Goat year, he was told by Goroyemon that he must renew the instrument, because Seihachi claimed that the debt was increased by interest to 28 *ryo*, 2 *bu*. The witness thereupon renewed the instrument, and at the same time wrote

1. The meaning of this name ("calf-bridge") shows how Shoshichi came to go to that region.

No. 63] the name of the person in question[1] and of his relative Kazayemon of the same village, as sureties, without informing them, and delivered it to Seihachi,—putting no seal on it, however, since he was a son, [not the head of a family,] and had none.[2]

The said Jinsuke, Goroyemon, Kanjiro, Kumezo, as well as Yasugoro and Saburoyemon, were summoned and examined; but they declared that there was no truth in Shoshichi's story. It finally appeared, after further examination and repeated confrontations[3] of the persons involved, that Shoshichi's statements were false and that he had not taken part in gambling; that he stopped at the houses of Saburoyemon and Kanjiro, on his way to a neighboring village to do some doctoring, and only played chess with the above two and Goroyemon, Jinsuke, Kumezo, and others, betting[4] 10 or 20 *sen* on the result; that he was beaten and lost a small sum and requested Seishichi to lend him some money, who, being then in need of money himself in a bargain he was making for a horse, promised to borrow it of Seihachi, through the intervention of Goroyemon and Kanjiro, but the promise was not carried out and the money was not received; that afterwards, in the 8th month of the Goat year (the year before last), he was again in want of money for a similar reason,[5] and at the request of Seihachi made out an instrument for 28 *ryo*, 2 *bu*, in the name of his father Shozayemon, and delivered it to Seihachi; that, as Seihachi did not have the entire sum at hand, only 3 *ryo* were received on account,[6] the residue to be given after-

1. Probably Shozayemon, the father; *tonin*, "this person," is constantly used where the reader must guess at the reference. 2. This second document was apparently signed by Shoshichi, with his father's and Kazayemon's names as sureties. 3. *Aitai*. 4. *Kakeshogi*, to bet on chess. *Bakuyeki* is the term for "gambling," and here seems to be confined to pure games of chance, not including betting on games of skill. 5. That is, gambling debts. 6. *Uchikin*.

wards; and that, before this was done, Seihachi fell ill and died. The above also appears from the account-books of the plaintiff to have been the true nature of the transaction. It seems that the instrument, when first delivered, bore no seal, and was probably sealed afterwards in Seihachi's presence, when the payment on account was made and the residue promised, but the facts as to this part of the transaction cannot be learned with certainty, Seihachi being no more.

Now, as for Katsu, there was negligence on her part in bringing the suit against Shozayemon without conferring further with him, even though she did not know that the instrument bearing the name of Shozayemon, found among Seihachi's papers after his death, was really executed and delivered by Shozayemon's son Shoshichi without his father's knowledge, and that Seihachi had never handed over more than a part of the loan. Next, as to Shoshichi, he played chess, in the last Dragon year, with Jinsuke and others, betting 10 or 20 *sen* on the game; and, when he went to borrow of Seihachi and was told that the loan would be given only on condition that the instrument was in his father Shozayemon's name, he delivered [to Seihachi] an instrument, without seal, bearing the name of his father, and received a sum on account. When the action was brought[1] by Katsu, widow of Seihachi, against Shozayemon, for the money due on that loan, Shoshichi was afraid, and, recalling to his mind the chess-playing with Jinsuke and others, he bethought himself foolishly that, if he should make up a story that he had gambled with them and had obtained through their intervention a loan[2] from Seihachi in order to pay the gambling debt, and should file a petition[3] in Court to that effect, the others, alarmed at the seriousness of the charge that they had been

1. *Aite-toru* (to take another as defendant). 2. *Kari-uke-morau.* 3. *Uttae-ideru.*

No. 63] engaged in this violation of law, would endeavor to settle the case privately and cease to trouble his father Shozayemon any further; and so he brought in the interpellation containing false statements to the above effect. But now he realizes his misdoings and repents. As for Goroyemon, Jinsuke, Saburoyemon, Kumezo, and Kanejiro, they stopped short with betting on the chess, but for this violation of law in betting on the chess (in company with Shoshichi) they are now thoroughly repentant.

As Shoshichi has paid back to the plaintiff the 3 *ryo* borrowed from Seihachi, and as Shozayemon has declared that he has no fault to find with any person, the whole affair having grown out of his son's misconduct, the parties all petition by a joint-document for the withdrawal of the action,—a course which appears to be perfectly allowable. Now though Shoshichi, Goroyemon, Jinsuke, Saburoyemon, Kumezo, and Kanjiro were so culpable as to make bets in violation of law, yet the affair occurred in the last Dragon year, two years ago. Shoshichi, as well as Katsu, ought in strictness to be visited with severe measures for their culpable conduct, but now that leave to withdraw has been asked for, I think it would be better only to order for Shoshichi severe censure, and for Katsu, censure, omitting any further penalty; and as for Goroyemon, Jinsuke, Saburoyemon, Kumezo, and Kanjiro, to make no order for punishing them for misdoings of so long ago. All should hand up a document of submission, acknowledging the granting of leave to withdraw.

I consult you as to the above decision.

Year of the Cock,

7th month."

2. *Judgment.*

"Action for a money loan, brought by Katsu, widow of Seihachi, of Shimosa *kuni*, Kemmikawa village, against Jingobei, of the same village, and 54 others.

The claim was for arrears amounting to some 329 *ryo*, 2 *bu*, and 28 *kwan*, 200 *mon* in small money, due to Katsu, widow of Seihachi, of Shimosa *kuni*, Chiba *kori*, Kemmikawa village, in the deputy's district of Iwata Kuwasaburo, from Jingobei, of the same village, in the income-fief of Kobayashi Toranosuke, and 54 others, and an indorsing-seal summons was issued and trial had. Pending trial the plaintiff, after consulting with Jingobei and 53 others, privately settled[1] the suit against these defendants, receiving some 89 *ryo*, 1 *bu*, and 9 *kwan*, 700 *mon* in small money, out of the 301 *ryo*, 2 *shu*, and 28 *kwan*, 200 *mon* in small money [which she claimed], and agreeing to take new instruments for 138 *ryo*, 3 *bu*, and make no further claim for the remainder. An instrument of discharge signed by all parties was filed. But the count[2] in the complaint against Shozayemon, of the same *kori*, Katsuta village, in the income-fief of Ishiwo Oribe [was not included in this settlement, and] his son Shoshichi then made an interpellation, stating that the loan was really made to him for paying a gambling debt and that his father Shozayemon had no knowledge of it at all. Witnesses were then summoned and further trial had, and it appeared, after the parties had been confronted, that Shoshichi had in fact not gambled, as he had stated, that he had only bet on chess, and that his statements above mentioned were false. It also appeared that Shoshichi, without informing his father, had arranged with Seihachi to borrow the sum of 28 *ryo*, 2 *bu*, but that only 3 *ryo* were received, Seihachi not having the whole sum at hand, and that, before the residue was received, Seihachi died.

The 3 *ryo* having been returned to the plaintiff, the parties have all petitioned for leave to withdraw the action, declaring that they have no further allegations to make, and this petition is granted and an order of withdrawal accord-

1. *Rachi-akeru*, put an end to. 2. *Bun*, part.

No. 63] ingly issued. As for Katsu, Shoshichi, Goroyemon, Kumezo Saburoyemon, Kanjiro, and Jinsuke, [the following orders are made].

As for Katsu, there was negligence on her part in bringing the suit against Shozayemon without conferring further with him, even though she did not know that the instrument bearing the name of Shozayemon, found among Seihachi's papers after his death, was really executed and delivered by Shozayemon's son Shoshichi without his father's knowledge, and that Seihachi had never handed over more than a part of the loan. Next, as to Shoshichi, he played chess, in the last Dragon year, with Jinsuke and others, betting 10 or 20 *sen* on the game; and, when he went to borrow of Seihachi and was told that the loan would be given only on condition that the instrument was in his father Shozayemon's name, he delivered [to Seihachi] an instrument, without seal, bearing the name of his father, and received a sum on account. When the action was brought by Katsu, widow of Seihachi, against Shoyemon, for the money due on that loan, Shoshichi was afraid, and, recalling to his mind the chess-playing with Jinsuke and others, he bethought himself foolishly that, if he should make up a story that he had gambled with them and had obtained through their intervention a loan from Seihachi in order to pay the gambling debt, and should file a petition in Court to that effect, the others, alarmed at the seriousness of the charge that they had been engaged in this violation of law, would endeavor to settle the case privately and cease to trouble his father Shozayemon any further; and so he brought in the interpellation, containing false statements to the above effect.

As for Goroyemon, Jinsuke, Saburoyemon, Kumezo, and Kanjiro, they stopped short with betting on the chess, but this betting, as well as Shoshichi's, was in violation of law and was culpable in every one. The parties in strictness deserve severe measures, but, as leave to withdraw has been asked, Katsu is allowed to go with merely a

censure, Shoshichi, with severe censure, and for Goroyemon, Kumezo, Saburoyemon, Kanjiro, and Jinsuke, no order of punishment shall be made, the offence having occurred so long ago.

Such being the judgment, the parties are to hand up a document of submission; and notice of the judgment is also to be given to Hara Tsugizo, clerk of Iwata Kuwasaburo, to Nagata Gorodayu, retainer of Ishiwo Oribe, and to Nomura Yabei, retainer of Yoshida Shinan."

SECTION II.—CHATTELS.[1]

[No. 70][2] *Concerning the Business of Leasing Chattels for Hire.*[3]

A Memorial by the Town Magistrates.[4]
Dated Kokwa, II. 8 (September, 1802).

1. *Memorial.*

"From Odagiri, Lord of Tosa,
Negishi, Lord of Hizen.

In order to obtain some knowledge of the facts relating to those who make a livelihood by chattel leases, we have had a report prepared as to what is commonly believed on the subject.[5] We have not publicly said so on the occasion of examining litigants, yet it seems to us that these reports reach the essence of the subject. On the whole, this leasing of chattels for hire—household utensils and furnishings, clothes, and the like—, if made for the limited period already prescribed and for a moderate charge, is a convenient method of supplying the temporary needs of borrowers; and the practice has been, for some time, to order restoration of the articles sued for and

1. *Buppin* (*butsu-hin*); this seems the nearest available rendering. 2. The numbers of the cases were necessarily given before printing for purposes of cross-reference, and after printing had begun some changes were made in the numbering which left a few numbers unfilled between the first and second Sections. There is no gap in the text, except that one unimportant case has been omitted. 3. *Sonryo.* 4. Probably to the Council of State. Cited from "*Shojidome-sho.*" 5. Probably like the one appended to No. 33, *ante.*

payment within 90 days of unpaid charges. In the class of cases that have come before the Court of late the borrowers are the poorer classes,—dwellers in back streets, people living on the earnings of to-day,[1] and the like. If they once fall sick, they have no capital[2] [to support them,] and no one will lend them money in the ordinary way; so they lease chattels and borrow money by pawning them, or lease the chattels and then pawn them again with the lessor, or borrow money directly, the transaction being nominally a chattel-lease. There is of course no fixed rate for the hire of the chattels; and as the creditors are liable to find that their penniless debtors have fled the town, escaping secretly to the country districts, or have in some other way eluded them, they naturally impose rather high charges. Now, unless claims arising from these transactions are relegated to private settlement, the cases daily brought before us will reach a large number; and our second deliberation in the last Goat year, three years ago (1799),[3] was on the questions: 'Shall actions on chattel-leases henceforth be rejected? [If not entirely,] how can a reduction in their number be effected?' In former times there were persons called 'day-to-day lenders,'[4] who exacted a high daily interest and lent for a period of days. For each transaction they made out two instruments, one of which, intended for show, declared the rate of interest to be 1 *bu* per 20 *ryo* [per month; while the other contained the actual terms agreed on.] But in the 2nd (Dog) year of Kwansei (1790), strict regulations were issued against usurers, and since then the term 'day-to-day loan' has gradually disappeared and that of 'chattel leases' has come into use instead. In the same way, we believe, these 'chattel leases' will

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1. *Sono-hi-gurashi;* hand-to-mouth persons, who never have anything saved from yesterday. 2. *Motode.* 3. See *infra*, 2. 4. *Hi* (day)-*nashi* (instalment)-*kashi.*

No. 70. disappear if we take strict measures. Yet, as we have said, this sort of transaction is to the poor man a perpetual spring at which he quenches his thirst and obtains refreshment and strength, and to destroy it entirely would be a fruitless waste of effort on our part. Our conclusion was, after much deliberation that where the claim was clearly unconscionable and oppressive, the guilty party should be censured and either sentenced to hand-stocks or committed to the charge of relatives or friends, according to the circumstances; and judgment [for the recovery of any part of his claims] should hardly ever be given. [This rule was followed.] Those whose extortions had not been of an aggravated sort were talked to of the right and wrong[1] of the matter, and, as a rule, they acknowledged the justice of what was said and entered into a private settlement. Out-and-out usurers, of course, were on conviction sentenced to banishment to a distant island. But since last Goat year(1799)[2] it is a fact that no final judgment has been rendered in an action for hire of chattels leased; for when the military gentry have been found borrowing chattels for hire or even in possession of articles suspected to have been obtained in that way, they were reasoned with on the right and wrong of the matter; and where lenders were found leasing chattels for hire, instead of lending money directly, they were severely reproved, and in consequence settled the claims privately; so that there was no need of rendering a judgment at all.

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1. *Ri* (advantage)-*gai* (disadvantage). The nature of this peculiar Sinico-Japanese expression has already been explained. The whole bearings of a subject are sometimes indicated by naming the two opposite terms involved, thus "farness-nearness" is "distance". So here *rigai* signifies all the considerations that bear on a question. The Court set these forth to the parties and urged them to act in accordance with the dictates of reason. 2. The year of the decision reached in the next document.

Such are the considerations affecting this subject. [Sec. II.
The complete prohibition of these chattel leases would inevitably cause great distress among the poorer classes, and we believe that these claims should be dealt with in the mode already followed. Particular note should be taken by the officers of our two Courts [1] of the names recorded in the register [as professional money-lenders] ; and these and all others, wherever a particularly extortionate claim is made or the defendant is specially culpable, should be punished, according to the circumstances, by banishment to one's province,[2] by confinement in hand stocks, or the like.

Such are our views on this subject, expressed after perusal of the above report.

Year of the Dog,
8th month (September, 1802)."

2. *Instructions of the Town Magistrates, at this time in force.*

"(a). Actions on chattel leases forrestoration of the articles and payment of the charges ;

(b). Actions on money-loans, in which final judgment is given at this Court :

The trial of actions and disputes of every kind should take place as soon as possible and judgment be rendered. With regard, however, to the above two sorts, even though the accounts, etc., are in proper shape, and are just as alleged by the plaintiff, payment should henceforth not be ordered immediately,—the new rule in this point departing from the previous practice of ordering payment within a short time even without requiring an instrument of acknowledgment.[3] A joint pleading should be ordered, the case tried by the Trial Bureau, and most probably, after the right and

1. The two Town Magistrate's Courts. 2. *Zai-sho.* 3. *Kuchigaki*, the written acknowledgment of the judgment required of a defendant after judgment rendered. See No. 28, *ante.*

No. 70] wrong have been set forth to the parties, payment will be made and no judgment need be rendered. If, however, the case comes to a judgment, the defendant must draw up an instrument of acknowledgment, declaring that he will positively not fail to pay as ordered.

The above resolution was reached by the Lord of Tosa and the Lord of Hizen, after consultation.

Kwansei, XI (Goat), 5, 27 (June 30, 1799)."

[No. 71] *Leasing of Chattels for Hire.*

A Town Proclamation by the Chamber of Decisions.

Dated Bunkwa, II (Ox), 2 (March, 1805).

1. *Proposal*[1] *by the Town Magistrates regarding the leasing of chattels for hire.*

"It has been a custom for certain money-lenders to lend small sums (known as 'day-to-day loans') to that class of townspeople who live on the earnings of each day. The rate of interest was a little higher than usual, and the loan was used by them as their capital for that day.[2] However, when the order of last Serpent year was made directing the private settlement of [ordinary] money-loans, the makers of these day-to-day loans began to fear for their repayment,[3] and [in order to evade the new law] they resorted to leases

1. *Ukagai-sho.* 2. They spend the money for food, etc., and pay it back with what they manage to earn during the day. There were and are numbers of such people in the capital. 3. This was the Order of Kwansei, IX (1797), given in Nos. 18 and 111, by which ordinary money-loans due before that date were directed to be settled privately. It precluded recovery of a mere money-loan, but did not prevent the lessor of a chattel from recovering the chattel and its hire.

of clothes, bedding, etc., charging a fee by way of hire, and taking an instrument of lease from the debtor; the hirers then put these articles in pawn with consent of the lessors, and thus obtained money for their temporary necessities. Thus the hirers were under a double burden even greater than the exorbitant interest before paid, the hire to be paid to the owners of these articles, and the interest to be paid to the pawnbrokers. We have come to the conclusion, after much deliberation, that it would be well to forbid these leases of chattels for hire, and we enclose a draft-proclamation aimed at preventing these exactions. [Sec. II.

The lower class of the military gentry[1] have fallen into the evil practice of hiring articles in the above way, When suit has been brought for repayment, sometimes the parties have made private settlement, sometimes they have proceeded to trial. At the present time there are a number of suits of the sort pending, in which, if a private settlement should not be reached, a full trial must be had. Nevertheless as the lenders have been guilty of improper conduct, it is hardly proper that payment shoud, be ordered; while the hirers, who also are reprehensible, certainly deserve some penalty.[2] It would be well to make an order such as is contained in the enclosed draft, and to have it apply to future suits only, leaving the present litigants to go unpunished.

We beg to make the above proposal, and enclose the draft of a town proclamation.

Year of the Ox,
2nd month.

Odagiri, Lord of Tosa,
Negishi, Lord of Hizen."

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1. *Gokenin.* See p. 9, note 8.

2. The creditors aggravated their usuriousness by taking advantage of a *samurai's* needs. The debtors were guilty of conduct unbecoming a *samurai.*

No. 71] 2. *Draft of a Town-Proclamation.*

"In the 9th month of the last Serpent year a Proclamation was issued regarding actions on money-loans, directing that from and after that month such actions should not be brought to judgment, but that [private] settlement should, after trial,[1] be ordered. Consequently all claims for the repayment of money, whether gold, silver, or small money, should be settled in that way. But those who make a practice of lending money to the lower classes have now, in order to be sure of [enforcing] payment, ceased to lend the money itself, and instead lease bedding, etc., for hire, taking an instrument from the hirer, who raises money to satisfy his needs by putting these articles in pawn, Thus the debtors are subjected to a double burden—the hire of the chattels and the interest on pledge-loan—and are in great distress. Moreover, it is said that in many cases the instrument is in terms a lease of chattels, but in reality it is money, not chattels, that the debtor receives. This is improper conduct on the part of the creditor. We learn, furthermore, that these loans are made espicially to the military gentry and privately;[2] and it is an aggravation of the offence. However no punishment will be inflicted on those who have taken part, since there have been no public regulations against such practices. But hereafter the following rules shall be obeyed:—

(1). Actions brought for the payment of arrears of loans of gold, silver, or small money made at the customary rates of interest shall be taken up and payment ordered, if the instrument of debt is valid.[3] Loans at a higher rate than the customary one are strictly forbidden.

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1. A provisional examination, to discover the true nature of the transaction. 2. That is, without informing the proper officials. 3 That is, it is properly sealed and contains no unlawful provisions.

(2). Actions on chattel-leases,[1] where the debtor is really in need, and the articles are the customary ones—clothes, bedding, etc, used for the purpose—shall be taken up and payment ordered, if on trial the transaction proves to be a lawful one. [Sec. II.

Note, that of course no action shall be maintained where the transaction is really, though not nominally, illegal; the [essential and sufficient] rule is that the instrument of debt should declare that the lease is for temporary convenience and should limit the lease to 3 days; furthermore the hire should not be more than the customary rate [of interest].

If these rules are obeyed, no undesirable consequences will attend them. Hereafter no actions on leases found to be tainted with illegality—as where the articles have been hired and then privately put in pawn—shall be taken up; and where there has been special culpability, a penalty shall be inflicted. No order of payment shall be made in actions on chattel-leases now pending; they shall be left to private settlement. The above rules shall be obeyed, and hereafter all oppressive loans forbidden. Violations of this order will be punished.

The above is to be published in all the wards.

Year of the Ox,
2nd month."

3. *Acknowledgment of sanction.*

"We acknowledge the receipt of your order to issue a Town-Proclamation as proposed by us.

Year of the Ox,
2nd month, 19th day (March 19, 1805).
Odagiri, Lord of Tosa,
Negishi, Lord of Hizen."

1. The original does not specify whether the payment of the rent or the restoration of the article was demanded; both were apparently included in the same action.

[No. 72] *Private Settlement of Actions for Restoration of Chattels Leased and for Payment of Fees.*

A Reply of the Lord of Kai, Town Magistrate, to a Consultation by Nabeshima, Minister of Public Works, Town Magistrate.

Dated Tempo, XV (Dragon), 8, 5 (September 16, 1844).

1.

"To the Lord of Kai.

from Nabeshima, Minister of Public Works.

There have of late been numbers of suits for the restoration of chattels leased for hire. The plaintiffs did not ask for the payment of the fee,[1] but only for the restoration of the article leased. On trying the cases brought on loans made previous to the Private-Settlement Order,[2] it appeared that in a number of them the subsequent pawning of the articles was a part of the transaction. Ordinarily, if the parties cannot settle their dispute privately, they are to be summoned, trial had, and judgment rendered. But as regards these agreements for chattel-leases, there is a Town-Proclamation of the year of the Ox, three years ago (1841),[3] as well as an official Regulation[4] of last year, 6th month, 7th day (July 4, 1843), forbidding certain reprehensible sorts of leases whether the illegality appears on its face or not. Now the charge of a fee in these leases is virtually the same as getting interest on a loan;[5] so that it would seem proper to

1. *Ryosen;* the euphemism adopted to veil the transaction. 2. See No. 118, *post.* 3. This does not appear. 4. Instructions from the Magistrates' Offices to the local officials. 5. That is, where the lessor, to evade the law, has bought and leased chattels, and the debtor has pledged these and got a loan, the lessor has attained his original purpose of making a profit on his money as effectually as if he had lent it directly to the debtor.

order a private settlement in actions for the restoration of articles leased before the above Order.[1] However, if the debtor not only refuses to pay the fee, but even, though the creditor has his deed-of-hand, limited to 3 days, as the regulations require, declines to restore the article, he should be deemed culpable, and the article should be taken away from him [for the creditor] and payment [of the fees] ordered.[2] Of course an action shall be taken up if founded on a transaction which is really, though not in appearance, an unlawful one, especially where chattels are leased (instead of money loaned) for very high fees,[3] even though the instrument states that the lease, [as required by law,] is for 3 days only.

These seem to me desirable regulations to make, and I beg to consult you on the subject.

Year of the Dragon,
8th month."

2. *Reply.*

"A claim made at the present time for the restoration of chattels leased, where the lease was made on a 3-days' instrument before the Private-Settlement Order is, in essence, an unlawful one. My opinion is that after trial of the case it should be disposed of as you say; and I shall adopt the same practice in my own Court.

I reply as above.

Year of the Dragon,
8th month."

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1. See Note 2. 2. This passage exhibits plainly the real nature of these so-called Nullification or Private-Settlement Orders. They were by no means intended to extinguish entirely the claims covered by them, or to cut off entirely the creditor's remedy, as our prescriptive statutes do. A compromise was ordered; but if the debtor did not make a real compromise, in which the creditor received at least some portion of his due, the Court would enforce satisfaction. Thus the debtor was not allowed to reject entirely the creditor's demand. Other passages point to the same idea. 3. That is, the fee, if compared with the value of the article, is equivalent to a very high interest.

No. 73] without showing it in the instrument. If, then, suit is brought merely for the restoration of the articles, and recovery be allowed, it is as if they were allowed to recover their capital, though without interest,—which does not seem proper; and these cases should be disposed of by an order of private-settlement according to what can be agreed on with the debtors. Nevertheless, if a case arises in which a person is really obliged to borrow some articles (not under an agreement to pay a fee), and then [without previous concert with the lender] puts them into pawn, should they not be restored to their owner?

We beg to make this second inquiry.

Year of the Dragon,
6th month.

Hara Tsuruyemon,
Sakuma Kenjiro,
Nakamura Jirohachi."

3. *Letter from a Clerk.*[1]

"According to our instructions after a second inquiry, we send for your perusal the reply received, and beg the favor of your opinion.

Zenzayemon."

[No. 74.] *Disposition of Actions against Military Gentry for Restoration of Chattels Leased.*

An Inquiry by a Clerk of the Town Magistrate.[2]

"In Kayei, V (Rat), 8, 8 (September 21, 1852), it was ordered that such actions be disposed of as proposed by us in our inquiry. The action was for the restoration of chattels leased, by a woman Rise, of Dobo ward, Yashima, Tenjin-

1. This was evidently sent with Letters 1 and 2 as enclosures.
2. Cited from "*Yo-shojidome-sho.*"

shita, [Yedo,] against the Palace Attendants[1] Teii and two others. There was recently a 7th-day case[2] of the same sort, and a trial was had after summoning the parties. However, after deliberation by the Court, another summons[3] to appear in 6 months, as is proper in money actions, was decided on. The case was to be tried before long to determine whether performance should be ordered. On the 28th of last month, however, the same plaintiff brought an action founded on the same transaction against Seika and one other, Timekeeping Attendants of the West Palace.[1] The complaint in the last case has been served on the defendant Seika, and if in the case against Teii an order for performance is issued, two actions based on the same facts might be decided differently, which would be improper. Accordingly both parties [in the case against Teii] were summoned a few days ago and trial had. The defendant asserted that no chattels were really leased, but only money loaned. The plaintiff, on the contrary, positively asserted that there had been a lease of chattels. The two thus contradicted each other directly. They were summoned once more, and it was announced to them that in view of their contradictions it would be useless to try the case further, and that in any case, even though the plaintiff's assertion were true, yet the charging of a fee for chattel olans was the same as getting interest on a money loan [and hence the claim was necessarily relegated to private settlement]. The best way of disposing of the case seems to be to order an amicable settlement, postponing the case for 6 months more; then, if no settlement is reached, to summon them next 1st month, examine the matter again, and order performance.

[Sec. II.

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1. See p. 166, *ante*. 2. That is, a case dealt with by a single Magistrate, not going to the Chamber. 3. *Yobidashi*.

No. 75] stated above, he was merely required to make out an instrument to that effect, and no order was made as to the royalty. An instrument signed by Jibei was [also taken up and] placed in the official record-chest. The complaint and answer together were then sent for cancellation of the indorsing-seals."[1]

[No. 76] *Transportation of Freight.*

An action between Heibei and another, of Takenouchi village, Yashu,[2] and Mizuyemon and 10 others, of Mikami village, same *kuni*, before the Lord of Shinano.[3]

Dated Temmei, I (Ox), 12, 11 (January 24, 1782).[4]

1. *Report of the Case.*

"Heibei and another, of Takenouchi village, Haga *kori*, Yashu, in the income-fief[5] of Okubo, Lord of Idzu, brought suit, alleging that they followed the occupation of freight-forwarders, receiving the paper and tobacco goods sent for sale from Sakesu town by the Karasuyama company,[6] of the same *kori*, and sending them on to the freight-forwarders of Kube village, of the same *kori*: and that Mizuyemon and 10 others, freight-forwarders of Mikami village, in the same *kori*, and in the income-fief of Ashino, Under-Steward of the Imperial Kitchen, were interfering with the plaintiffs' business. The parties were summoned by indorsing-seal,[7] and trial was had. It appeared that the paper-

1. This was the regular procedure at the conclusion of a case before the Chamber. Compare No. 13, Art. 2, *ante*. 2. Shimotsuke *kuni*. 3. Then Finance Magistrate. 4. Taken from "*Saibandome-sho*." 5. *Chigyo*. See Part I. 6. *Karasuyama* was a place-name, applied to a kind of paper; probably identical with Rein's *Kurashi-yama*. 7. *Uraban*; that is, before the Chamber of Decisions.

goods forwarded from Sakesu town after being bought by the paper-dealers were known as the "guild goods," while the paper sent from that place for sale elsewhere was termed "auction-sale goods."[1] Tobacco sent to Yedo was called "Yedo goods," and that intended for the neighborhood [about Sakesu town] was called "auction-sale goods." Thus far the parties agreed, but as on other points they contradicted each other, it was difficult to reach a conclusion. They were therefore ordered to abide by the arrangement settled upon in Horeki, VII, Ox (1757);[2] that is, the "auction-sale" paper goods were to be forwarded through the freight-forwarders of Takenouchi village, while the "guild goods" were to be taken by the forwarders of Mikami village; and the tobacco was to be forwarded in the same way. The parties were ordered to hand up instruments of acknowledgment and to avoid disputes in the future. The above decision was communicated to Ashizawa Hachiro, retainer of Okubo, Lord of Idzu, to Arai Seikichi, retainer of Ashino, Under-Steward of the Imperial Kitchen, and to Katayama Bunzo, retainer of Soyei Yeyan;[3] and the complaint and answer together were sent for cancellation of the indorsing-seals." [Sec. II.

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1. The subject of the case is one that occurs more frequently in the later Sections of Part III,—interference with a prescriptive right to a monopoly. Here the plaintiffs had possessed the right to deal with certain classes of freight, and hence it became important to know just what kinds of goods were included under the customary names. The first class was the goods bought wholesale by a *nakama* (a firm or company belonging to a guild), probably for sale in Yedo; while the second was apparently the goods sent out by the producers for direct sale to the petty country-dealers. 2. As later cases will show, an agreement as to the limits of such a franchise was often made between all parties and preserved for scores of years as indicating the extent of the prescriptive right. 3. This is a formality customarily employed after the decision of any important case.

No. 76. 2. *Instrument of Submission.*

"On trial of our dispute the old document of Genroku, III (1690), given by Takenouchi village to Mikami village [to settle the respective privileges of the parties], was found difficult to decipher. In the subsequent memorandum of Kyoho, XVIII (1733), the payment of a commission[1] [to the defendants] was recorded; but this was confined to the Kuroba paper, and did not apply to the Karasuyama paper sent from Sakesu town; so that this did not settle the dispute. In Horeki, VII, Ox (1757), another document, sealed by Sayemon and another for Takenouchi village, was given to Genji Uyemon, freight-forwarder of Kubo village, in which it was stated that the forwarding-rights of Kihei, a party to the dispute then pending, were transferred in entirety to Mikami village. It thus appeared that the goods purchased by the members of the paper-guild, not only the Karasuyama company,[2] but also the Torinoko company, should be taken for forwarding by Mikami village. As for the "auction-sale" goods, they should be taken for forwarding by Takenouchi village, notwithstanding that auction-sales are made at a number of new places other than the prescriptive ones.[3] The plaintiffs' assertion that the transfer of Kihei's right, as stated in the above document, was a single exceptional case is not well founded. Nor is there any proof of the defendants' claim to collect a commission from paper goods forwarded from

1. *Kosen;* the defendants claimed either to have the privilege of forwarding certain goods, or to oblige the plaintiffs to pay a commission if the latter forwarded them. 2. As a share (*nakama*) was often divided among a number of houses, the word "company" will here be used. 3. The defendant wished at least to restrict the plaintiffs' business to those places and persons where a prescriptive right was clear. But the Court lays down a general rule, allowing the plaintiff to forward independently of the question whether he has ever taken to the place before or not.

Sakesu town. The same is true[1] of leaf-tobacco[2] freight. [Sec. II.
But tobacco for Yedo is to be taken by Takenouchi village. In the first place the old account-books of the plaintiffs show the records of tobacco forwarded by them. Moreover, it is unlikely that Mikami village will suffer appreciably, even though no commission be collected by it as stated in the Kyoho document. Furthermore, though the document of Horeki, VII, speaks of the transfer of certain forwarding-rights, without distinguishing between "guild goods" and "auction-sale goods," yet as Jibei and Heibei of Takenouchi village have been following the general occupation of freight-forwarding, there is no reason why their business should be restricted to the forwarding of paper goods.[3] So that the tobacco, as well as the paper, is to be forwarded to the next village[4] by the plaintiffs.

The above order has been issued, and if we violate it, we are to be punished. We accordingly hand up this instrument of submission.

Temmei, I (Ox), 12, 11 (January 24, 1782).

The plaintiff, *Heibei*, representative of *Heibei*, company-chief, and *Jibei*, farmer, of Takenouchi village, Haga *kori*, Yashu, in the fief of Okubo, Lord of Idzu:

The defendants, *Mizuyemon*, *Bubei*, and *Jinyemon*, representatives of *Hikoyemon* and another, farmers, *Hikozayemon*, company-chief, *Jinyemon* headman, of Mikami village, the same *kori*, in the income-fief of Ashino, Under-Steward of the Imperial Kitchen, *Mizuyemon*, and four others, farmers, and *Bubei*, presiding headman, of the same village, in the income fief of Soyei Yeyan.

To the Chamber of Decisions."

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1. It is impossible to tell which part of the previous conclusions this refers to. 2. This seems to be the meaning of *kusa-ni*. 3. The connection between the qualifying clause and the conclusion is not clear.

SECTION III.—INTEREST.[1]

[No. 77] *Interest on Money Loans.*

A Proclamation, with Notes thereon.
Dated Kyoho, XIV, Cock, (1729).

1. *Proclamation.* Dated Kyoho, XIV, (Cock), 10, 26, (December 14, 1729).[2]

"After the re-coinage of gold and silver in the Genroku period (1688-1703) the price of grain advanced considerably. Lately, however, it has fallen off again. Notwithstanding this decline in grain-prices, the interest on loans and pledges remains the same as before, to the great embarrassment of the people. Accordingly it is proclaimed that hereafter the interest paid on money loaned since Genroku, XV (1702), shall be not more than 5 per cent;[3] so that, where money loans previously made are renewed at the end of the year with notes payable in the future, the interest shall be as above.

The reduction above ordered shall not affect loans on which the interest is now in arrears. The above rule shall be strictly obeyed by borrowers and lenders. If borrowers fail to pay, the creditors should report to the Magistrate. If the reduced interest is not taken, the borrower shall bring the matter before the Magistrate.

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1. *Risoku, ribu.* 2. Taken from "*Bunden-sosho-sho.*" 3. *Go-bu.* The unit was divided into 10 *wari;* and each *wari* was conceived as having 10 *bu.* Hence 5 per cent. is "*go-bu,*" 15 per cent. "*ichi-wari go-bu,*" etc.

New money loans may be made privately, on whatever terms the parties please, except that no excessive interest must be contracted for. [Sec. III.

The above rules are to be strictly kept in mind.

Year of the Cock,

10th month."

2. *An Inquiry addressed to the Finance Magistrate by a Clerk.*

Dated Kyoho XIV, Cock (1729).

"(1). The order has been issued that there should be no reduction in the case of loans whose interest is now in arrears. Does this apply only to loans on which the interest is entirely unpaid, excluding the cases where some portion has been paid?

Appended Note. Just so.

"(2). The proclamation states that new money loans not secured may be made privately, on whatever terms the parties pleased, that in case of non-payment the creditor shall bring the matter to Court, and that in case the reduced is not allowed, the borrower shall come to Court about it. Now is payment to be ordered not only in case of [ordinary unsecured] loans, but also in case of loans on pledges [where the parties have transacted the matter privately[1]]?

Appended Note. We shall consult [the Chamber] and let you know.

"(3). In regard to new money loans, it is declared that they may be made privately on whatever terms the parties please, except that oppressive interest was prohibited. Does this mean that interest on [ordinary] money loans made previous to the date of the proclamation is to be paid

1. This seems to be the only explanation of the sentence.

No. 77] off at the rate of not more than 5 per cent., while interest on loans made thereafter shall bear interest as the parties please?

Appended Note. Just so.

These questions in regard to the payment of ordinary loans and pledge-loans have arisen in connection with transactions of the sort in various villages, upon which the deputies have consulted us.

Year of the Cock,
11th month.

Ina Hanyemon."

8. *Resolution of the Chamber of Decisions.*

Dated Kyoho XIV (Cock).

"If in the instruments of loan the rate of interest appears as a part of the original, recovery shall be granted [without further delay]; but if the entry appears to have been written in after the execution of the document, an examination into the facts shall first be made."

[No. 78] *Interest on Money Loans.*

A Resolution of the Chamber of Decisions.
Dated Gembun, I (Dragon), 9 (October, 1786).[1]

1. *Resolution.*

"Interest on [ordinary] money loans and on hypothecs was [in Kyoho, XIV] lowered from the high rate of 20 per cent. to the rate of 5 per cent. Now, however, an order shall be issued prescribing 15 per cent. as the proper rate.

The above was determined at a session of the Full Chamber."

1. Taken from "*Injoshin-cho* of Gembun, IV."

2. *Appended Order.* [Sec. III.

"Interest on [ordinary] money loans and on hypothecs shall be lowered to 15 per cent., payment being ordered at this rate."

[No 79] *Correction of the Rate of Interest in Land-Pledge Instruments bearing no Seal of the Headman or no Place-name or in any way not corresponding to the Land, etc., and in Tenancy Contracts similarly defective, both being regarded as Hypothecs.*

A Resolution of the Chamber.

Dated Gembun, I (Dragon), 9, 21 (October 25, 1736).[1]

"Since Kyoho, XIV (1729), land-pledge instruments bearing no seal of the headman, no place-name,[2] or in any way not corresponding to the land pledged,[3] are to be regarded as hypothecs. Such claims, then, are to be treated on the footing of [ordinary] money loans, and the sum due is to be paid off at the end of 30 days.[4]

Note, that arrears in the payment of rent by the tenant are therefore to be assimilated to interest on a loan[5] and are not to exceed 15 per cent.

Year of the Dragon.

9th month.

The above was determined at a session of the Full Chamber."

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1. Taken from "*Kakidome-sho.*" 2. *Meisho;* probably the *azana* or name of a plot of land, given to it when originally reclaimed. See Simmons, *Notes on Land Tenure, etc.*, p. 101. 3. The written instrument not correctly describing the land pledged. 4. In the earlier periods the regular procedure for money loans. 5. The pledgor often received the land back from the pledgee as tenant, and paid rent to the pledgee during the term. Numerous loans and lawsuits involving this transaction will be found in Part VI.

No. 82] My idea as to the proper practice proves to agree exactly with yours; so, in accordance with your appended note, we shall both adopt the same practice.

5th month."

[No. 83] *Amendment of the Rule in regard to Interest on Money Loans.*

A Proclamation-Order from the Council of State to the Three Magistrates.

Dated Tempo, XIII (Tiger), 9,29 (November 1, 1842).[1]

1. *Proclamation.*

"To the Three Magistrates :

'(1.) Hitherto the interest on money loans in general has been 15 per cent. It is now ordered that hereafter the rate shall be 1 *bu* per 25 *ryo*. Not the least excess beyond this shall be allowed. Sundry charges exacting a higher rate under other names are of course prohibited.

(2.) On loans already made at the usurious interest of 20 per cent, the rate shall be reduced to the above figure of 1 *bu* per 25 *ryo*. Loans may be made at lower rates as the parties please.

(3.) The rate shall apply to all loans whatever, even though from the funds of royal abbots[2] or other persons of high position.

(4) The fixing of the above rate of interest on money loans is not to be looked upon as a cause of loss to money-lenders; it rather tends to their peace of mind.[3]

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1. Taken from "*O-kakitsuke-tome-sho*," and "*Shin-harigami-sho*." It has been already said the title *Sambugyo* (Three Magistrates) is probably merely the popular name for the Chamber of Decisions. 2. See No. 32, *ante*. 3. By relaxing the strain on the debtor class and preventing bankruptcies and flight.

Moneyed persons ought to lend their money for the benefit of society; borrowers are not to be so reprehensible as to fail to pay what they owe. Lenders should sue for their money only when it cannot be helped, showing uprightness and sincerity in all their dealings, and obeying the regulations of Kwansei, IX, Serpent year,[1] for money actions. If these rules are violated and unjust dealing practiced, they will on conviction be severely reproved. [Sec. III.

The contents of the above shall be proclaimed through all the wards and villages.

9th month.'

The above order is to be announced in all those places where the proclamation of Kwansei was announced.[2] Judgment shall be rendered hereafter only on careful examination of the facts. Where unjust dealing is discovered, it should be carefully investigated for violations of the above rules, and defaulting debtors who have been ordered to pay are to be carefully examined again, and payment again ordered."

2. *Proposal by the Chamber in connection with the above law.*

Dated Tempo, XIII (Tiger), 10, 25 (November 27, 1842).

"(1). Money loans made before the end of the last 9th month at an interest of more than 1 *bu* per 25 *ryo* shall be ordered paid at the rate of 1 *bu* per 25 *ryo*, if suit is brought on or after the 1st day of the present month.

(2). If the instrument of loan is dated on or after

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1. Probably No. 13, *ante*. 2. The "places" probably refers to the country districts; and the idea is merely for the officials to take pains that the announcement is made in all places where the Shogunate judicial authority reached. This last paragraph is a direction appended for the benefit of the Magistrates in their enforcement of the proclamation.

No. 83] the 1st day of the present month[1] and bears a higher interest than 1 *bu* per 25 *ryo*, no suit shall be entertained thereon.

(3). Part payments and final settlements of money loans upon private agreement pending trial shall be made at the rate of 1 *ryo* per 25 *bu*.

(4). The present schedule for instalment-payments after judgment[2] has been calculated for an interest of 1 *bu* per 20 *ryo*; but as the difference between that rate and the one now ordered is not considerable enough to cause serious embarrassment to the debtors, the schedule of instalments shall remain unchanged.

(5). The rate now ordered is to apply equally to loans from funds of royal abbots and other persons of high position; the rate is to be lowered to 1 *bu* per 25 *ryo* for loans made up to the end of the last 9th month, and suits on loans made since then at a higher rate are not to be taken up.

(6). Now that the present order has been issued [reducing the rate of interest], if debtors are found acting reprehensibly in the private settlement of their debts, judgment shall be rendered against them, after trial, strictly and unfailingly; if there is delay in the payment of instalments, execution in bankruptcy shall issue as speedily as the circumstances may require.

(7). The rules for the disposition of suits on money loans hold good also for actions concerning deposits,[3] hypothec of cultivated land or of houses, and ground-rent and shop-rent.

(8). Hitherto there have been various ways of attempting to enforce payment, where one of the military gentry has

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1. The proclamation had been issued on the 29th of the 9th month. 2. The reform in procedure which abolished the instalment-payments was not effected till the next year. See No. 28, *ante*. 3. *Cho-kin*. See No. 127, *post*.

been ordered to repay a loan and has failed to hand in the instalments as ordered. Hereafter, if a case occurs in which such a debtor culpably fails to have his retainer make the payment, no leniency shall be shown in dealing with him, and strict fulfilment of the obligation shall be required. Sec. III]

In all cases whatever of loans, payment shall be ordered, according to the provisions of the Proclamation, after carefully trying the case and considering all the circumstances.

The above order is proposed by us for sanction.

Year of the Tiger,

10th month."

3. *Acknowledgment of Sanction received.*

"We acknowledge the receipt of an order to proceed exactly in accordance with our proposal to the Lord of Echizen."[1]

[No. 84] *Interest on Money Loans.*

A Reply by the Town Magistrate to an Inquiry by officials of the Lord of Owari,

Dated Kayei, VI (Ox), 2, 29 (April 7, 1853).

1. *Inquiry.*

"To the Town Magistrates,

from the Lord of Owari's Castle-Officers :

The townspeople who have lent money to the retainers of the Lord of Owari are bringing suits in his Office for repayment. In such suits is the calculation of interest to include the month in which the suit is brought ? And if the rate agreed on is higher than 6 per cent, is it to be lowered to that figure ? Or shall the interest calculation not include the month of the suit ?"

1. Presiding Councillor of State.

No. 84] 2. *Appended Reply.*

"Interest should be calculated according to the second alternative mentioned by you. The rate is not to be higher than 1 *bu* in 25 *ryo*, as ordered in the last Tiger year, 11 years ago.

Year of the Ox,
2nd month.

Ido, Lord of Tsushima."

[No. 85] *Omission of Interest for Intercalary Months in Judgments on Money Loans.*

A Reply by the Town Magistrate to a Consultation by the Finance Magistrate.[1]
Dated Kayei, VI (Ox), 10, 13 (November 13, 1853).[2]

1. *Consultation.*

"To Ido, Lord of Tsushima,
from Honda, Lord of Kaga.

In ordering payment in actions on money loans the practice has been, in the calculation of interest, to omit the intercalary month and a statement to this effect has been made in the instrument of submission which the parties are caused to sign after judgment rendered. The reason is that if we include the intercalary month or months the result would be unfair [to the debtor]; for [the agreed] 15 per cent. [per year] is intended to be the interest for a whole year, whether or not an intercalary month happens to occur during a given year or not.[3] The terms of the Order of

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1. Taken from "*Shoji-dome-sho.*" 2. Probably. 3. For the old Japanese Calendar, see Part I.

last Tiger year,[1] however, indicate that the interest account is to be calculated by monthly instalments.[2] Shall, then, the interest calculation be made on the basis of a whole year, and payment ordered accordingly? I cannot find any precedents in my office, and I therefore consult you on the point. [Sec. III.

Year of the Ox,
10th month."

2. *Appended Reply.*

"Your letter of consultation has been received, and search has been made for precedents. I found that there has been a regular practice on the subject. In the last Hare year, the very year succeeding the Tiger year,[3] it was agreed, at a consultation of my predecessors, to omit the intercalary month, and interest has since been calculated on that basis. A copy of the form for ordering interest is herewith enclosed for your information.

The above is my reply.
Year of the Ox.
10th month.
Ido, Lord of Tsushima."

3. *Enclosed Copy of Resolution and Form of Order.*

"The following form of order was determined upon, on consultation between Torii, Lord of Kai, and Abe, Lord of Totomi,[4] Tempo, XIV, Hare year, 6th month (July, 1843):

'Both parties being present after trial had, on summons to appear for joinder of suit on——date, in the action brought——month,——day, on a claim

1. Tempo, XIII, 1842; No. 83, *ante.* 2. Because the rate of interest was fixed at 1 *bu* per month per 25 *ryo.* It is obvious that in years when an intercalary month occurred this rate would exceed 15 per cent. 3. The year of the law in question. 4. Town Magistrates.

No. 85] for——, against——, by——, of——ward, renter of——shop, on an instrument dated——year, ——month, the following is declared to be the state of accounts:

Principal,——*ryo* in gold.

That is to say,——*ryo*, with interest for——months, excluding intercalary months, from——year,——month, to——year,——month, at the rate of 1 *bu* per month per——*ryo*.

Total amount due, principal and interest: ——*ryo* in gold.

Part payments,——*ryo* received,——years, ——months.

Remainder,——*ryo* in gold, now due.

The above statement of the amount due is declared by both parties, after inspection, to be correct, and they have no objection to make against an order of payment. Let it therefore be as above.' "

[No. 86] *Compound Interest*[1] *on Money Loans.*[2]

"When, for example, on a contract to repay 10 *ryo* with interest at 15 per cent. a year, the lender brings suit demanding compound interest on the amount in arrears, it shall not be permitted; for the instrument of loan given at the time does not provide for it, and the failure of the lender to bring suit on default in the first year's interest is his own act. In such cases the calculation shall be made at the ordinary rate of 15 per cent. a year.

However, where an instrument of loan has been renewed and the new instrument provides that interest in arrear is to be added to the capital and to draw

1. *Ri* (interest)-*bai* (double). 2. Taken from "*Kosei-jimmon-shu sho.*"

interest upon itself, the borrower will not be allowed [Sec. III. to escape from the payment of this interest, in a subsequent action, by alleging that he never agreed [to pay compound interest] and by showing the original instrument, because at the renewal of the instrument compound interest was provided for by agreement of the parties. Payment shall therefore be ordered according to the new instrument."

[No. 87] *Interest on Advances for Investment made by the Dried-sardine Guild.*

A Report by the Manager [1] of the Guild.[2]
Dated Bunsei, X (Boar), 9, 2 (October 10, 1827)

" In an action concerning dried-sardine investment-advances[3] between Heizayemon, farmer, of Shimonagai village, Shimosa *kuni*, in the income-fief of Takai, Lord of Tsushima, and Jiroyemon, house-owner, of Hirane ward, Fukagawa [Yedo,] the following report was handed up by the Manager of the guild of wholesalers on the question whether interest could be charged, no mention of interest occurring in the memorandum of the transaction, though the advance was therein described as lent;

'When in transactions with the coast villages deposits[4] are made of investment-money,[5] transportation-money,[6] and final amounts due on purchase-money,[7] interest

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1. *Gyoji*. See Part I. 2. Taken from "*Shoji-dome-sho*." 3. *Shiire-zenkin*. It has already been explained that this term usually applies to the advances made by the wholesale dealer to the producer, for the purchase of stock, living expenses, etc. This system of advances to the artisan and the producer is still prevalent in Japanese commerce. 4. *Azukari*. 5. *Shiire-kin*. 6. *Ni-kawase-kin;* the probable meaning. 7. *Nimotsu shikiri-kin*. This phrase is here used technically, and apparently means the final *(shikiri)* amount due, on delivery of the goods by the producer, over and above

No. 87] is customarily paid at 8 *rin* a day per *ryo*. It is true that in some of the instruments given no interest is expressly stipulated; while in others is found only the expression 'interest-payers.' These, however, are merely individual cases, due to carelessness or to special agreement with the part of the fishermen who furnish the goods; and the general rule among the members of the guild for many years has been to charge this rate of 8 *rin*. This will appear from documents handed up to the Court by the Manager of the dried-sardine guild, in Anyei, V (Ape), 9, 13 (October 24, 1776):[1]

(But it is not known what action the Court took in these cases.)

(*a*) "We respectfully offer the following report in answer to your inquiry:

More than a hundred years have passed since our dealings in dried-sardines were begun here, in the period Shoho (1644-1647); and it was about seventy years ago, in the period Teikyo (1684-1688), that our trade became established on a solid foundation, and that for the furtherance of our business we began to enter into arrangements with the coast villagers who furnished the product.

As to interest, it was alleged not long ago that this was paid at the rate of 8 *rin* a day per *ryo* in gold; and that is correct.

We shall be greatly pleased if the order is made that the same rate shall continue in force.

Horeki (Rat), 5, 5 (June 2, 1756).[2]

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previous advances made to him by the wholesaler for purchase of material, utensils, etc.

1. Answers when consulted by the Court as to prevailing commercial customs. 2. This date and that of the next document shows that when they were handed in, as stated above, in Anyei (1776), they were offered as old documents as showing the custom of previous times. That is, their present appearance in Court is their third.

Jibei, of Block No. 8, Kofune ward, [Sec. II.
and 7 others.
To Isshiki, Lord of Suwo, [1]
Magistrate's Office."

(*b*) "We respectfully offer the following report in answer to your inquiry:

We have been summoned in connection with an action by one of the new wholesale-houses in regard to the use of a crush-net[2] at Kujukuri fishing-village during the spring of the last Rat year. (The next passage is upon another subject and is omitted). The interest on 1 *ryo* gold is 3 *rin* silver a day; so that for 100 *ryo* for 1 year it would amount to 17 *ryo*, 2 *bu*, in gold, and 10 *momme*, in silver:[3] the rate is thus about 18 per cent. a year. We receive this daily interest for our loans; but as we are bound to pay interest at the same rate on the remainder of the purchase-money[4] due from us to the coast villagers, there is on striking a balance a slight profit in our favor, which we apply to the interest on our own borrowings.[5] (The next passage is upon another point, and is here omitted).

The guild-members hope to have a continuance of the prosperity hitherto existing and to be free

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1. Finance Magistrate. 2. *Tsubushi-ami*. 3. 100 *rin* = 10 *bu* = 1 *momme* silver. Allowing 354 days to the year, this gives a total, for 100 *ryo* in one year, of 1062 *momme*, or 17 *ryo* (1 *ryo* = 60 *momme*), 2 *bu* (1 *bu* = 15 *momme*), and 12 *momme*,— a slight discrepancy. 4. *Uri-shikiri-kin*. 5. The idea seems to be that the wholesalers were constantly making advances to the fishermen, and on the other hand the sums due to the latter as the remainder of the price of goods delivered to the wholesalers were constantly falling due; and that on the balancing of accounts there was a slight balance in favor of the wholesalers, by reason of the former sums having been running longer. The allusions are not entirely clear.

No. 87] from loss and misfortune; and therefore solicit your gracious favor.

Horeki, VII (Ox), 2, 23 (April 11, 1757).

Chuyemon, of the Zakka House, and 42 others.

To the Finance Magistrate."

(c) "We respectfully offer the following report in answer to your inquiry:

To your inquiries in regard to the sums loaned by the dried sardine wholesale-houses to the coast villages as investment-money and in regard to the respective amounts loaned to each debtor we make the following replies:

(The next passage relates to another topic and is omitted here). Inquiry has been made as to the interest on loans for investing in nets. A few years ago, by an agreement on that subject made between the coast-villagers' traveling-agents[1] and the Yedo wholesale houses, it was decided that interest should be paid, in order to facilitate for them the circulation of money,[2] at 3 *rin* a day. The purchase-money[3] for goods sent by the travelling agents was left on deposit at the rate of 3 *rin* a day, and the loans [by the wholesalers] were to bear interest at the same rate. (The next passage does not relate to this subject, and it is omitted). Such are the

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1. *Ryo* (traveling)-*nin* (persons). It seems fairly clear that we have here a person corresponding somewhat in function to the commercial traveler of Western lands, but also acting as a collecting and forwarding agent. 2. This is either a phrase meaning merely "for general convenience," or a way of saying that a rather high interest would induce a prompter settling. 3. *Uridaikin*. 4. *Azukari;* that is, it was treated as paid and then returned by the creditor to the debtor and left at interest.

amounts and rates of our loans. The amounts in arrears—that is, since Horeki—have not been calculated. [Sec. III.

The above are our answers.

Kwansei, III (Ox), 2, 5 (March 9, 1791).

Kabei, representative of
Kashiro, of the Hashimoto House,
Manager of the Dried-sardine Guild.

To Ina, Lord of Settsu,[1]
at the Government Office."

The preceding copies of records are handed up by us in answer to your inquiries respecting the custom of our guild. We assure you that they are correct.

For Yoyemon of Block No. 3, Koami ward, Zembei, representative during his absence on a journey to Seishu, and in charge of his shop, and temporary manager of the guild of dried sardines' lees and oil; and one other."

1. Finance Magistrate.

SECTION IV.—CONTRACTS FOR PAYMENT IN YEARLY AND MONTHLY INSTALMENTS.[1]

[No. 88] *Payment by Yearly Instalments.*

A Memorandum handed up by the Full Chamber and approved.[2]

Dated Horeki, IX (Hare), 6, 26 (July 20, 1759).[3]

1. *Memorandum.*

"It has already been held that where a loan has been renewed with an instrument providing for payment by instalments, payment should be ordered of those instalments only which have fallen due according to the terms of the instrument; that is, that those portions whose day for payment had not yet arrived would [not yet be ordered paid, but must] be left to private settlement, [if the debtor cared to do so in advance,] and that the portions unpaid at the expiration of the terms agreed on should be ordered paid, no matter how many times the same order be given.[4] But these instalment-instruments often contain a clause providing that in case a single default occurs and suit is brought for the instalment in arrear, the whole principal of the loan or the principal and interest shall fall due at once. If, now, we order

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1. *Nen-gep-pu.* 2. By the Council of State. 3. Taken from "*Kakidome-sho.*" 4. The effect of this clause is not clear, unless it means that the Court will repeatedly order full payment and not recommend compromise.

payment of the whole principal in this way, following the provisions of the instrument, and going contrary to the [general nature of] the contract as entered into by the parties, there will be two opposite methods of treating the instalment instruments nowadays executed, [which is not desirable]. Moreover [the clause in itself is not a good one for the interests of debtors, for] those who have borrowed in previous years will be greatly embarrassed by being frustrated in their hope of making the ordinary instalment-agreement in the future, while those who have already entered into instalment-agreements will find the object of this arrangement defeated, if an order is made for immediate full payment. We propose, therefore, that a clause of the above purport should be disregarded, and that payment should be ordered of only the instalment due and unpaid, as decided upon at the last consultation above cited. [Sec. IV.

Year of the Hare,
6th month."

2. *Acknowledgment of sanction received.*

"We acknowledge the receipt of the order approving the proposal made by us.

Year of the Hare,
7th month, 11th day.
Chamber of Decisions, Full Session."

[No. 89] *Proofs*[1] *in Contracts for Yearly and Monthly Instalments.*

A Resolution of the Chamber of Decisions.[2]
Dated Anyei, IV (Goat), 12, 25 (January 16, 1776).[3]

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1. *Shoko-butsu.* 2. Probably. 3. Taken from "*Kakidome-sho.*"

No. 89] "It is frequently attempted by the debtor, in actions on instalment contracts, to prove the state of accounts by the entries in his account-book[1] or by letters written by the creditor and stating the number of months unpaid for. Such proofs certainly cannot avail in actions on instalment-contracts, and the whole amount must be ordered paid, [if no other proofs of payment are forthcoming]. But, even though in the contract-instrument itself, a record of instalments paid is wanting, it will be sufficient if a signed written receipt is preserved, showing the amount paid in a year or a month; in such a case, it has been determined on consultation, judgment should be given in the debtor's favor [to the extent of sums so evidenced]."

[No. 90] *Instruments providing that Instalments due at a Future Date shall fall due Immediately on Default in a single Instalment.*

A Regulation of the Finance Magistrate.[2]
Dated Bunsei, III (Dragon), 1 (February, 1820).

"In actions on yearly-instalment contracts, instruments are sometimes presented which contain a clause providing that, in case of failure to pay a single year's instalment, the whole amount appointed for subsequent dates shall fall due immediately. If this provision were given effect, there would have been no use in making the instalment-contract in the beginning. Moreover there are precedents declaring such a provision unlawful. Payment shall be ordered, therefore, in such cases of no more than the instalment due and unpaid, and the part

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1. *Kayoi-cho*; one of the kinds of account books kept by a merchant. 2. Taken from "*Shin-harigami-sho.*"

of the complaint[1] relating to the instalments whose term has not yet expired shall be disregarded.[2] [Sec. IV.

The above rule has been laid down, in order that the practice may henceforth be uniform, by Ishikawa, Steward of Imperial Waters.[3]

[No. 91] *Yearly Instalment Payments without Interest to the Rice-Brokers.*[4]

A Memorandum of an Order to be announced to the Warehouse-Samurai[5] by the Town Magistrate.

Dated Tempo, XIV (Hare), 12 (February, 1844).[6]

1. *Note.*

"Memorandum.

As provided in the accompanying document, the amounts due from the various military gentry for loans

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1. *Meyasu.* 2. This passage may mean that when the plaintiff states his case no note shall be taken by the clerk, in reducing it to writing, of the portions in question. 3. Finance Magistrate. 4. *Fuda-sashi.* These were the ordinary rice-brokers, who advanced money to the *samurai* on their rice-stipends, or sold the rice on commission. On the whole subject of this case further information will be found in Part I. 5. *Kurayado;* the *samurai* who privately transacted business as rice-brokers, without leaving their caste to become merchants. It would seem from this title that the term *fuda-sashi* was often used generically so as to include them. The only explanation of the term occurring thus in the head-note is that the last sentence *infra* should read: "The above shall be proclaimed [*also*] to the *kurayado,*" and the maker of the head-note hastily took this as the chief purport of the proclamation. But for another use of the term *kurayado,* which may be intended here, see No. 127, *infra.* 6. Taken from "*Shojidome-sho.*"

No. 91] made from the Saruya ward Assembly-Office[1] shall be paid off by instalments proportioned to the amount due."

2. *Order for Proclamation.*

"To the Town Magistrate:

(1) The rules in regard to loans by rice-brokers are hereby changed.[2] Hereafter loans to upper and lower *samurai*[3] alike shall be paid off, whether they be new or old loans, in yearly instalments without interest, from the time of the renewal of the instrument[4] at the time of the payment of winter-rice[5] this winter.

(2) The above instalments shall be made at the rate of 5 *ryo* in gold per year per 100 bales for loans of 100 *ryo* or more, and at the rate of 5 per cent. of the principal for sums of less than 100 *ryo*.[6] This yearly instalment shall be divided into three parts: in every 5

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1. This was an office connected with the Finance Department, and loans were here made to the *fudasashi*, and also, it, seems, to *samurai*. 2. The purpose of this proclamation was to relieve the strain upon the *samurai* debtor class who had borrowed beyond their means and had no hope of paying. 3. *Hatamoto, gokenin;* See p. 9. 4. As has been before noticed, the habit was frequently to renew the instrument of debt; and the above occasion would be a very proper one for the renewal here enjoined or assumed. 5. *On-kiri-mai.* The rice-stipend of all the higher *samurai*, including all holding official positions, was paid 3 times a year, in spring, summer, and winter. The first two were called *on-kari-mai* (official loaned rice), the last, *on-kiri-mai* (official final rice). 6. The stipend was usually paid part in rice and part in money. Hence a rate at which rice could be turned into money was needed; this was determined by the authorities beforehand and announced on a *harigami* or poster. It was published at so many *ryo* per 100 bales, the rate in a certain year, for instance, being 40 *ryo*. A bale contained usually about one-third of a *koku*. Thus incomes were reckoned at a fixed number of bales, but at any time the figure was transmutable into *ryo*. The figure of the loan was naturally reckoned in *ryo*.

ryo, 1 *ryo* 2 *bu* per 100 bales for each of the first two payment days,[1] and for the third, 2 *ryo* per 100 bales, and the settlement of accounts shall take place at the spring, summer and winter payment-days. [Sec. IV.

But note that loans are to be made in future with no less facility and readiness than heretofore.

(3). Advances of stipend[2] made for the next salary-term or the next but one shall be reckoned in gold, taking 36 *ryo*, the rate posted for this winter's salary-payment, as the basis of reckoning;[3] but these loans shall be settled at the latest by the 10th month of the coming year.

(4). Government-loans,[4] therefore, [already made] to brokers at the Saruya ward Assembly-Office shall also be paid according to the above schedule, that is, by instalments without interest. Any loans made hereafter shall be subject to the same rules as heretofore.

(5). It is thought that low-interest loans to upper and lower *samurai* at the Saruya ward Assembly-Office are not desirable; so henceforth such loans are prohibited.[5] All loans made up to date [to any one person] shall be regarded as a single sum, and also the advances furnished[6] by the rice-brokers, and payment shall be ordered in instalments without interest at the rate of 5 *ryo* in gold per 100 bales.

The above orders are issued. Let each observe them strictly and see to it that no violation occurs.

12th month.

The above order shall be issued to the Warehouse *samurai*."

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1. See Note 5, p. 318. 2. *On-fuchi-kata-mai*. There was sometimes a distinction between *on-fuchi-mai*, *o-yaku-ryo*, and the other euphemisms for the stipends; but here the term seems to apply to all stipends due at these three occasions. 3. See Note 1, *supra*. 4. *On-sage-kin*. 5. Thus all previous official loans were to be paid off without interest; and thereafter such loans were to be given up. 6. *Yodatekin*; lit. money supplied.

No. 91] 3. *Memorandum of Instructions to the Town Magistrate*, to order rice-brokers not to cause inconvenience by restricting their loans, since at Saruya ward Assembly-Office a new [official] loan has been authorized for the stipendiaries of the Government, as provided in a previous Order.

"To the Town Magistrate :

An order has just been issued authorizing the repayment of the loans from rice-brokers in yearly instalments without interest. Now once more, as in the Kwansei period (1789-1801), Government money is to be lent out, at the Saruya ward Assembly-Office, to the brokers at the rate of 5 per cent. a year, and a new loan from the Government to the stipendiaries is hereby ordered.[1] [The brokers] shall therefore be careful to supply the needs of the stipendiaries without hesitation. If culpable practices occur, and suit is brought, the brokers shall be severely censured.

The above shall be proclaimed.

10th month."

[No. 92] *Action for Arrears of Yearly or Monthly Instalments due on Instalment-Contracts or on Court-Orders.*[2]

"Where action is brought for arrears of yearly or monthly instalments ordered by the Court or agreed upon by the parties, and the plaintiff demands the immediate payment of the whole sum, principal and interest, the plaintiff should be shown that is out of reason and humanity to demand the immediate payment of those instalments not yet fallen due, and the order of payment should cover only

1. The only explanation of this statement is either that some special loan elsewhere authorized is meant, or that the loan was an advance of the rice stipend. 2. No date appended. Probably a Magistrate's Regulation.

the instalments in arrear at the time, excluding instalments not yet fallen due; since a demand for the immediate payment of the whole sum would go against the plaintiff's generous agreement to accept payment by way of instalments." [Sec. IV.

[No. 93] *Yearly Instalments.*

An Action against Ritoji, of Okusa village, Shinshu,[1] and 4 others, by Kinsuke, representative of Kakubei, of the same village, before the Lord of Suwo.[2]

Dated Kwansei, II (Dog), 8, 4 (September 12, 1790).

1. *Judgment of the Chamber.*

"Action for the payment of 3 *ryō*, a yearly-instalment due and unpaid, between

Ritoji, of Okusa village, Ina *kori*, Shinshu, deputy's district of Suzuki Shinkichi ..... *Defendant;*

and

Rinsuke, representative of Kakubei, of the same village, in the income fief of Kondo, Governor of Kyoto[3] ..... *Plaintiff.*

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1. Shinano *kuni*. 2. Finance Magistrate. The suit was brought in the Finance Magistrate's Court, and by him sent to the Chamber for decision. 3. There were apparently two or more sections of the district known as Okusa village; for the term *mura* was a loose one and might include several communities. It is impossible, in a given case, to know merely from the term *mura*, whether the region so named is under a single set of local officials. Thus the same *mura* might be not only under two sets of local officials, but even in two feudal territories. In one case in Part VI a *mura* lay at the corner of three such territories. It is true that a Shogunate deputy's district might coincide, for judicial purposes, with an income-fief, as many of these actions show; but here it would seem that one part of the *mura* lay in an income-fief, another in a deputy's district.

No. 93] In the above action both parties were summoned by indorsing-seal[1] and trial was had. It appeared clearly that the instrument of loan, which called for payment by instalments, and was the only proof of the claim, was not in fact given for a real loan, but for the residue of money due[2] on a lottery-arrangement.[3] The alleged loan being therefore

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1. *Uraban;* showing that the action was before the Chamber. 2. *Ato kake-kin.* 3. *Mujin.* The lottery was a favorite method in old Japan for raising money to assist the building of a temple, the repair of a house, and, especially, the succor of fellow-villagers in distress. It was often perverted to gambling purposes; but its charitable uses were equally important and were perhaps the original ones. There were numberless varieties, but two of the commonest methods may be described. A club is formed, and each member subscribes, say, 1 *kwammon.* The club meets perhaps once a month. If there are 100 members, the sum collected at the first meeting is 100 *kwammon.* Lots are then drawn, and the lucky one takes 10 *kwammon* and retires from the club. At the second meeting 99 *kwammon* are collected, 10 *kwammon* are taken as before, and the drawer retires. The number of persons is thus reduced one at a time, and when it is decided to end the transaction, the amount on hand is divided equally among those remaining. The term *mu* (without)-*jin* (end) thus arises from the lengthy time required to finish out the lottery. This machinery could be used for charitable purposes by giving the first drawing, or more, to the person or institution to be assisted. It could also be used for the purpose of loans to members of the club (where the club was in the nature of a permanent friendly society), the whole sum collected on each occasion being drawn for by lot and loaned to the successful drawer at legal interest. In this respect Japan has preceded us in the application of the idea on which our modern co-operative loan associations, etc., are founded; for the editor has translations of documents of these friendly clubs dating as far back as 1629. (See an article in the *Japan Mail* for October 14, 1891. For a description of an even more complicated arrangement in China, see Ball's *Things Chinese*, art. "Societies.") Lotteries were several times forbidden by the Tokugawa Government, (see Ruderff's *Tokugawa Gesetzsammlung*, *passim*) though it is difficult to say whether the prohibition in-

money due from a lottery, no judgment can be given on the claim, and the instrument is confiscated. The office of Kakubei[1] is forfeited, and in addition a fine of 10 *kwammon*, is imposed on him; because he took, even though by consent of all the promisors, an instrument purporting to be for a loan payable by instalments but really for a claim due out of a lottery, and did not confess on examination the real nature of the transaction, lest the action should be rejected, and also because, believing the 3 *bu* in arrears to be too little, he changed the sum to 3 *ryo*, and wrote himself as addressee[2] of the instrument, which originally had no address. Rinsuke's office[3] is forfeited, and in addition a fine of 5 *kwammon* is imposed on him; because, though fully aware of the above wrongdoing of Kakubei, he culpably undertook to act as Kakubei's representative and asserted that the instrument was given for a genuine loan. A fine of 3 *kwammon* is imposed on Ritoji; because he was culpable in executing the above instrument of loan to Kakubei, with his forest-land and residence-land as security,[4] while in reality the instrument was given for the residue of money due on a lottery-arrangement, [nor is it any justification that] it was done by consent of all parties. The offices of Gengoro[5] and Iyemon are forfeited, and a fine of 3 *kwammon* imposed on each; because, though fully aware of the facts, they affixed their seals as sureties to the instrument of loan. A fine of 3 *kwammon* each is imposed on Sennojo and Kohichi; because

[Sec. IV.

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cluded all *mujin*, charitable or not, or only gambling *mujin*. In the present case it is impossible to tell whether the action was rejected because it was founded on a lottery-transaction, or because the instrument had been fraudulently drawn up; so that no light is thrown on the above difficulty. The conduct of Kakubei merely indicates that for some reason he thought the *mujin* illegal.

1. Headman (*shoya*). 2. *Na-ate*. Such a document would be addressed to the person who was the creditor. 3. Headman (*shoya*). 4. *Teito*. Headman (*nanushi*).

No. 93] though fully aware of the facts, they affixed their seals as sureties to the instrument of loan.

The above judgment was rendered, in the presence of Masuda Yeisuke, representative of Suzuki Shirokichi, and of Hasegawa Juyemon, the retainer of Kondo, Governor of Kyoto.[1] An instrument of submission has been taken from the parties, and the complaint and answer together sent for the cancellation of the indorsing-seals."

2. *Instrument of Submission.*

"It has been decided in our suit that no judgment shall be rendered, because the transaction was not in fact a loan but a lottery-arrangement. It has been ordered that the office of Kakubei be forfeited, and in addition a fine of 10 *Kwammon* imposed on him; because he took, even though by consent of all the promisors, an instrument purporting to be for a loan payable by instalments but really for a claim due out of a lottery, and did not confess, on examination, the real nature of the transaction, lest the action should be rejected, and also because, believing the 3 *bu* in arrears to be too little, he changed the sum to 3 *ryo*, and wrote himself as addressee of the instrument which originally had no address.

It has been ordered that the office of Rinsuke be forfeited, and in addition a fine of 5 *kwammon* be imposed on him; because, though fully aware of the above wrongdoings of Kakubei, he culpably undertook to act as Kakubei's representative, and asserted that the instrument was given for a genuine loan.

It has been ordered that a fine of 3 *kwammon* be imposed on Ritōji; because he was culpable in executing the above instrument of loan to Kakubei, with his

1. An honorary title, it must be remembered.

forest-land and residence-land as security, while in reality the instrument was given for the residue of money due on a lottery-arrangement; [nor was it any justification that] it was done by consent of all parties. [Sec. IV.

It has been ordered that the offices of Gengoro and Iyemon be forfeited, and a fine of 3 *kwammon* imposed on each; because, though fully aware of the facts, they affixed their seals as sureties to the instrument of loan.

It has been ordered that a fine of 3 *kwammon* each be imposed on Sennojo and Kohichi; because, though fully aware of the facts, they affixed their seals as sureties to the instrument of loan.

It has also been ordered that the above fines must be paid at the office of Ina, Under-Minister of the Interior,[1] within the next 3 days.

We acknowledge the communication of the above orders and will observe them strictly; for any disobedience we must expect severe punishment. We hereby hand up our instrument of submission.

Kwansei, II (Dog,) 8, 4 (September 12, 1790).

Kakubei, plaintiff, headman[2] of Okusa village, Shinshu, in the income-fief of Kondo, Governor of Kyoto;

Rinsuke, older brother of Kakubei, headman[2] of the same village;

Ritoji, defendant, son of Masaburo, farmer, of Okusa village, deputy's district of Suzuki *Kohichi*:

Sennojo, for himself, and also as representative of Kohichi, farmer:

Gengoro, formerly Yasuke, headman[3] of the same village;

Iyemon, headman.[3]

To the Chamber of Decisions."

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1. Finance Magistrate. 2. *Shoya*. 3. *Nanushi*. The co-exist-

[No. 94] *Yearly-Instalments.*

An Action against Ino Hikozayemon, retainer of Matsudaira, Chief of Kadzusa,[1] defendant, by Konosuke, of Okano village, Sakushu,[2] plaintiff, before the Lord of Kai.[3]

Dated Bunkwa, XI (Dog), 11 (December, 1814).

1. *Consultation.*

" From Magaribuchi, Lord of Kai :

Action for yearly instalments, between

Ino Hikozayemon, retainer of Matsudaira, Chief of Kadzusa .....*Defendant :*

and

Konosuke, of Okano village, Sakushu...*Plaintiff.*

In the above action, brought before me, both parties were summoned for the 4th of the 6th month before the Chamber of Decisions, and joint-pleading[4] was had. It appeared that in the 2d (Ox) year of Bunkwa (1805) 6.360

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ence of *nanushi* and *shoya* in the same village is something that threatens with dissolution all the ordinary hypotheses as to the significance and history of these institutions. See Simmons, *Notes on Land Tenure, etc.*, pp. 100-110, 169. In this case it is possible that the *shoya* held somewhat the same office as the *kumigashira* elsewhere. There is some ground here, however, for thinking that these *nanushi* and *shoya* presided separately, as headmen, over two distinct communities comprised in the district known as Okusa village. But this does not make the problem much easier, for the proximity of the two kinds of headmen in neighboring villages is something not hitherto reckoned with.

1. The usual title with which the names of provinces are connected is *kami*, here translated "lord"; but the title of *kami* of the three provinces Kodzuke, Kadzusa, and Hitachi was hereditary in the Imperial Family, and for the military nobles the term *suke* (chief assistant) was substituted in those three cases (Gubbins, in Trans. Asiat. Soc. Jap., XV, 138). 2. Mimasaka *kuni*. 3. Finance Magistrate. 4. *Taiketsu*.

momme,[1] and in the 4th (Hare) year (1807) 2,000 *momme* were borrowed, at an annual interest of 1 *bu* per 30 *ryo*.[2] A small part of the principal was afterwards repaid; in some years interest only was paid; in others neither interest nor any part of the principal was paid; and in the last Goat year (1811) the total amount due, principal and interest, had reached 8,310 *momme*. The parties then agreed to turn the contract into one of yearly instalments; and, 10 *momme* having been struck out by consent of both, the sum of 1,600 *momme*, principal and interest together, was taken as the amount due on the loan of the Hare year, and the sum of 6,700 *momme*, principal and interest together, as the amount due on the loan of the Ox year, and yearly instalments were stipulated for at the rate of 646 *momme* per year for the 6,700 *momme* claim, and 154 *momme* per year for the 1,600 *momme* claim, the payments to continue for 13 years beginning with the Goat year. On the instrument given for the 1,600 *momme* loan Rinnosuke, the headman, and Jisaburo the company-chief, of Numata village, Bizen *kuni*, in the fief of the chief of Kadzusa, and district of his retainer Ino Hikozayemon, countersealed as sureties. But the instalments due on these loans were not paid for the ensuing three years, from the Goat to the Cock year. These arrears, 2,400 *momme*, are the subject of this suit.[3] These facts are admitted by both parties; and they have declared that they will obey without fail whatever judgment be rendered.

Now the total amount of the two loans, as newly capitalized, is 8,300 *momme*; this, divided into 13 instalments, gives 638 *momme*, 4 *bu*, 6 *rin*, to each.[4]

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1. The original form of expression is 6 *kwan* (thousand) 360 *me*. 2. In 1 *ryo* there were 60 *momme*. Hence these two sums amounted to not quite 140 *ryo*. 3. *Uttaye*. 4. $\frac{6}{13}$ *momme* remaining for each year are here expressed in tenths (*bu* or *fun*) and hundredths (*rin*), $\frac{6}{13}$ *momme* being equal to .4 *momme* + .06 *momme* approximately.

No. 94] But, by the provisions of the instruments, [the yearly instalments payable are 646 and 154 *momme* respectively, or 800 *momme* a year, which in 13 years amounts to 10,400 *momme*, and thus] the total sum payable is 2,100 *momme* in excess [of the loans as capitalized]. It was proper enough to take the old principal and interest as a new capital and turn the loan into an instalment contract; but to reckon interest again upon these is not just or fair. In my opinion the order of payment should omit this amount added for interest. If, then, we divide the total new principal 8,300 *momme*, into 13 parts, the annual amount due would be 638 *momme*, 4 *bu*, 6 *rin*, with 638 *momme*, 4 *bu*, 8 *rin* in the last (Goat) year of the series.[1] Will it, then be right to order that the instalment amount written in the instruments is invalid, that the yearly instalment due is to be 638 *momme*, 4 *bu*, 6 *rin*, that the arrears due for the past 3 years, viz. 1,915 *momme*, 3 *bu*, 8 *rin*, are to be paid within 30 days, and that the sums not yet due are to be paid as provided for in the instrument? In a money-loan action against Okubo Gemba by Genyemon, renter of the shop of Jinyemon, in Block No. 2, Kobiki ward, [Yedo], it was held at a session of the Full Chamber, after deliberation, that where principal and interest in arrear are capitalized in a new instalment-contract, interest on the amount so capitalized cannot be allowed, and that instalments in arrear must be ordered for payment within 30 days.[2]

I beg to consult you as to the above.

Year of the Dog,

11th month."

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1. Because the cycle was 12 years, and, as the payments began in the Goat year and lasted for 13 years, the final year would again be the Goat year. 2. This decision is not given here.

2. *Decision of the Chamber.* [Sec. 27.

"An action was brought by Katsuzayemon, representative of Konosuke, against Ino Hikozayemon, retainer of Matsudaira, Chief of Kadzusa, for arrears of instalment payments, aggregating 2,400 *momme*, due to Konosuke, of Okano village, Oniwa *kori*, Sakushu, in the fief held in trust by[1] Matsudaira, Lord of Echigo. Trial was had and the instrument of indebtedness was found to be correct in form. But it contains a provision that the interest [in arrears] should be capitalized, and thus interest be collected upon interest. Interest upon interest is not proper,[2] and therefore, though the provision was made with the debtor's consent, the sum thus provided for must be struck out. It is ordered, therefore, that 1,915 *momme*, 3 *bu*, 8 *rin*, [the lawful amount in arrears], be paid by the defendant to the plaintiff within 30 days. A memorandum of the final arrangement[3] is to be handed down to the parties [for signing], and this judgment communicated to Sawahara Tatsusaburo, retainer of the Chief of Kadzusa.

Note, that as the instruments provide that the instalments not yet due should be paid as stated in the instruments, [the amounts thus stated should be regarded as] 638 *momme*, 4 *bu*, 6 *rin*, yearly, with 638 *momme*, 4 *bu*, 8 *rin*, in the last (Goat) year of the series; and,

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1. *O-azukari sho.* See p. 22, *note* 4. 2. This reason alone would not prevent the Court from allowing interest during the 13 years on the original capital; yet such was the effect of the decision. It rests probably on the broader ground of a disinclination to allow interest in instalment-contracts. 3. *Oshikiri-kakitsuke.* It has been already said that *oshikiri* seems an equivalent term for *uke-shomon*, "instrument of submission," given at the end of a trial where, as here, the defendant was a *samurai*. The "handing down," therefore, indicates that here the draft was given for signature.

No. 94] furthermore, the clause of the instruments providing that on default in a single instalment the whole shall fall due at once is invalid. Let them be returned to the plaintiff."

[No 95] *Yearly-Instalments.*

An Action against Kimura Choan, defendant, by Jimpachi, of Kuruma ward, Shiba, [Yedo], plaintiff.

Dated Tempo, XIII (Tiger), 9, 21 (October 24, 1842).

" To Torii, Lord of Kai,[1]

from Toda Kaichiro :

I beg to address you a note with reference to the action against Kimura Choan by Jimpachi. Among the instruments put in by the plaintiff is one which agrees to pay instalments, not of money, but of rice, making yearly deliveries of 20 bales. It seems to be a proper transaction for an instalment contract, but as yet no judgment to this effect has been rendered. Shall I therefore [decide the case in that way, and] order that the plaintiff be given by a retainer of Kimura Choan an instrument in the form of that enclosed? If you have no objection, I will so dispose of the case and will make out and send up [to the Chamber] a formal instrument[3] of this tenor.

I beg to consult you as above, sending herewith a parcel of the instruments in the case and the draft [above referred to].

9th month, 21st day.

'*Draft.*

Total amount due from Kimura Choan,

.....Gold, 271 *ryo*, 1 *bu*, silver, 9 *momme*.

Payable within 30 days.

The above amount is to be paid to Jimpachi,

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1. Town Magistrate. 2. A clerk. 3. *Honshi.*

renter of the shop of Seisuke, of Kuruma ward, [Sec. IV.
Shiba, within the above period.

Tempo, XIII (Tiger) 9, 21 (October 24, 1842).

Chamber of Decisions.[1] ' "

Rubric.[2] "The instrument should be made out in the form you enclose and sent to the Chamber, as directed by the alternate Magistrate;[3] and another instrument should be made out in the following form and sent [with the appended paragraph] to the Chamber afterwards.[4]

'Instrument of Acknowledgment.

Total amount due and unpaid, principal and interest,

.....Gold, 213 *ryo*, 1 *bu*, silver, 7 *momme* 5 *bu*.

Of this

Gold, 71 *ryo*, silver, 7 *momme*, 5 *bu*, arrears from 10th month, Serpent year, to 1st month, Cock year;[5]

Gold, 35 *ryo*, arrears of rice for 4 years from the Serpent to the Ape year, (the value of 28 *koku*, at 1 *ryo* per 8 *to*).

Total, gold, 106 *ryo*, silver, 7 *momme*, 5 *bu*: to be paid now.[6]

Remainder,

Gold, 107 *ryo*, 1 *bu*.

The above have been determined to be the sums in arrear, and payment has been ordered. We shall strictly obey this order, and pay the remainder of 107 *ryo*, 1 *bu*, in instalments according to our contract already made.

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1. This is apparently a draft-judgment, which the Chamber is to confirm or not, when the case comes to it for final decision. 2. By the Town Magistrate. 3. *Tomari-yaku* (resting, not presiding). 4. That is, perhaps, in case the judgment is adopted by the Chamber. 5. Five years. 6. Within 30 days.

No. 95] Tempo, XIII (Tiger), 9, 21.

Inaba Kohei,
Ishizuka Genshin,
retainers of Kimura Choan.

To Jimpachi, Esq.'

Of the whole sum [originally borrowed], 308 *ryo* 1 *bu*, and 9 *momme*, 37 *ryo* have already been paid by degrees, and the present judgment is for the remaining 271 *ryo*, 1 *bu*, and 9 *momme*. The amount for which the period of payment has not yet arrived [1] is to be repaid according to the terms of the [original] instrument.

Tempo, XIII (Tiger), 9, 21.

Chamber of Decisions."[2]

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1. That is, 271 *ryo* minus the above 213 *ryo*, or about 58 *ryo*.
2. The case seems to be this. A sum of about 308 *ryo* was originally borrowed. Of this 37 *ryo* were paid, leaving 271 *ryo* due. The amount in arrears at a certain period was 213 *ryo*; this was turned into an instalment-contract by agreement of the parties. Out of this 213 *ryo*, 106 *ryo* were now in arrears. Hence judgment is given for the whole 271 *ryo*; 106 *ryo* in arrears are to be paid down, the remaining 107 *ryo* of the instalment contract are to be paid as they fall due, and the 58 *ryo* remaining on the original loan are also to be paid when due. The only inconsistency is the draft-instrument above, which requires the whole to be paid in 30 days. But its provisions would be over-ridden by the terms of the last paragraph of the second document. This last document is apparently a draft of an order or judgment to be signed by the Chamber; the first part being the form prescribed for the instrument of acknowledgment, and the second part the further directions of the Court on the subject.

SECTION V.—JOINT BORROWING.[1]

[No. 96] *A Loan incurred jointly by the Retainers of a noble Family; the Retainers afterwards punished and House-Extinction ordered;*[2] *the Sons and younger Brothers newly taken into Service, Stipends given, and Families established; in such a case how shall a Suit by the Creditors against the Sons and younger Brothers be disposed of?*

An Inquiry by Okamura Senzo, retainer of Naito, Lord of Yamato.

Dated Tempo, XI (Rat), 2 (March, 1840).

1. *Inquiry by the retainer of a lord.*

"The complaint of Jujiro, representative of Heikichi, now ill, renter of the house of Ichiyemon, house-manager, of Sendagaya ward, demanding of Yoshida Senzaburo the payment of money borrowed on joint-seals by Yoshida Ichisaburo and Yoshida Gakutaro, retainers of the Lord of Yamato, was handed down [to me for investigation] on the 23rd day, 12th month, year of the Boar (1839). Gakutaro had died in the previous year, and Ichitaro, his successor, a worthless fellow, absconded last year (Boar), and an order of house-extinction was made [by the lord].

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1. *Ren-shaku.* 2. *Ka-zetsu;* the ending of the family line and name.

No. 96] But as the Yoshida family had been for many generations faithful servants, the youngest brother of Gakutaro, Senzaburo, was directed to reëstablish the Yoshida family, as the successor of Hikosaburo, Gakutaro's father, and of his grandfather. Senzaburo was thus taken newly into service, and knew nothing of the loan to Gakutaro and Ichisaburo. Senzaburo is the head of a new family, not the successor of Gakutaro and Ichisaburo, and hence, it seems to me, is not liable for the loan to the latter. Is it right that he should be ordered to make a private settlement?

I beg to consult you as above.

2nd month, 7th day,

Okamura Senzo,

Retainer of Naito, Lord of Yamato."

2. *Consultation by the Town Magistrate.*[1]

"From Tsutsui, Lord of Kii.

Heikichi, renter of the house of Ichiyemon, in Sendagaya ward, [Yedo] .....*Plaintiff.*

Yoshida Senzaburo, retainer of Naito, Lord of Yamato .....*Defendant.*

The above action was brought in my Court; I handed down the complaint, and trial is now pending. It appears that certain money had been borrowed on joint-seals by Yoshida Gakutaro and Yoshida Ichisaburo, Senzaburo's elder brothers; that Gakutaro died some time ago and Ichisaburo, his successor, absconded in the Dog year, 12th month (1839),[2] and that on report of the facts to the lord an order of house-extinction was made. But as the Yoshida family had done faithful service for many generations, the name of the family was conferred on Senzaburo, Ichisaburo's younger brother, and he was

1. The Town Magistrate is laying before the Chamber (or at any rate the Three Magistrates) the case which the retainer has just sent to him. 2. The previous document made it the Boar year (1840).

newly taken into service. The plaintiff, believing Senzaburo to be the successor of Ichisaburo, brought action against him. Now it would seem on these facts that Senzaburo has been newly taken into service and is the founder of a new Yoshida family. Moreover, he knew nothing at all of the loan incurred by his brothers. Besides, as Ichisaburo was largely in debt, his creditors would all bring suit against Senzaburo, if in the present action the latter is held liable, and he would be unable to pay them and would be obliged to see his family extinguished. On the other hand, Senzaburo is in fact the younger brother of Ichisaburo, and maintains the old family shrine of the Yoshidas. These are arguments in favor of regarding him as Ichisaburo's successor. How should the action be decided? There are no precedents to go by. There are, however, cases in which it has been held that where a temple-incumbent has forfeited his benefice, and the benefice has been taken in charge by the chief temple of the sect and then granted out to a new incumbent, the latter is not liable for the debts of his predecessor. Shall we follow this principle and hold that Senzaburo is not liable for the loan? I am unable to come to a decision and accordingly I beg to consult you.

Year of the Rat,
3rd month."

3. *Appended Reply by the other Magistrates.*

"According to your letter we understand that the Yoshida name was given to Senzaburo, the brother of Ichisaburo, and that he was newly taken into service, the order being issued shortly after the flight of Ichitaro; and that thus the plaintiff supposed that Senzaburo was the successor of Ichisaburo. But the true view of the case is that Senzaburo is a new retainer, and the founder of a new family. The entry into service and the possession of the Yoshida name are due to the favor of his lord. If he is now ordered to pay this loan, he would become

No. 96] quite unable to perform his feudal duties and continue to bear the name of the Yoshida family, because the various creditors of Ichisaburo would be upon him. Thus the favor of his lord would have been bestowed to no purpose. If the house-extinction was in fact effected and Ichisaburo really absconded, would it not be unjust to order [Senzaburo] to pay the loan ? The plaintiff's mistaken belief that Senzaburo was Ichisaburo's successor is his own fault. In the last Rat year, the decision of Soga, Lord of Tango, now Finance Magistrate, in reply to a consultation by Ichikawa, Steward of Imperial Waters, was as follows : 'the former rule was that an action in which the lender demands from one who succeeds to the family name the payment of a loan made to one who has now absconded should not be taken up and sent [to the Chamber] for indorsing-seal. But this rule is not properly applicable to all similar actions. It is true that the flight in most cases is due to a burden of debt, and if "undertakers of the estate"[1] are made liable for all the loans of the fugitive, no one would take up the inheritance; so that the general rule should be as above. But where an action is brought in which the officers of the plaintiff's village have made inquiries of the officers of the defendant's village and the reply has been made that the defendant is in fact the regular successor[2] of the fugitive, the action should be taken up and the defendant held liable to pay the loan.'[3] In the present case judgment should not be given [for the plaintiff], for the plaintiff has not succeeded in producing any such information. This seems the proper disposition of the case.

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1. *Ato-kabu.* The distinction is between those who step in and take up a vacant inheritance for the honor of the family-name or to prevent land from going to waste, and those who are the regular successors (*sozoku-nin*) by relationship. The former case usually occurs where there are no sons or brothers left. 2. *Sozoku-nin.* 3. The passage is from No. 18, p. 28, *ante.*

Year of the Rat,
4th month.
Temple Magistrates,
Toyama, Warden of the Palace Gates, [1]
Finance Magistrates."

[No. 97] *Disposition of an Action by the Wife or Son of a Creditor on a Joint-instrument addressed to that Creditor.*[2]

A Correspondence between the Clerks of certain Magistrates.

Dated Ansei, VI, 5 (June, 1859).

1. *Appended Note by a Clerk.*[3]

"When the answer of the defendants was handed up by me [to the Magistrate], on the 24th of the 5th month, Ansei, VI, Dog (June 24, 1859), it was ordered that the joint-pleading should be postponed for a time.

2. *Letter from the Clerks of one Town Magistrate* [4] *to those of the other.*

"From Akiyama Kinzo,
Takahashi Kichiyemon,
Nakashima Saburoyemon,
to Yamazaki Sukezayemon,
Nakamura Jirohachi,
Nakata Gozayemon.

We have read your letter. We understand that Kono, the widow of Hironoichi, deceased, renter of the house of Zenzo, in Block No. 1, Fukui ward, Asakusa [district, Yedo],

1. The other Town Magistrate. 2. An instrument of debt is in form addressed to the creditor. 3. A note indicating that the trial was delayed while the following discussion went on upon the point of law. 4. Probably.

No. 97] has brought suit on an instrument jointly sealed by the defendants and addressed to Hironoichi; and you inquired of us recently as to the disposition of this action. The question arises whether, as stated in the report handed up by Okada, master-blindman of the first degree,[1] when the wife or son of a deceased [blindman] brought suit on an instrument addressed to[2] the deceased, and the chief of the blindman's guild[3] was inquired of as to the necessity for appending his seal in such a case, the action which this widow brings on an instrument addressed to the deceased Hironoichi must pass through the hands of the chief of the guild and the complaint bear his official seal.[4] We inquired of our superior[5] accordingly, and he answered as follows (and this is why we asked you to consider the matter further): That where a money-loan action is brought by the wife or son or member of the household of the deceased creditor, the custom of requiring the official seal of the chief of the guild is not merely a practice prescribed by the chief's own direction, but has been sanctioned by the Magistrate's Court. But you thought that the report of which we sent you a copy was to be regarded merely as a statement made by the guild-chief for the benefit of the Court on that particular occasion, and not as a regulation for the practice of the Magistrate's Court. You therefore

1. *Kengiyo*. See p. 15, note 1, *ante*. 2. See p. 62, note 4, *ante*. 3. *Soroku*. 4. The guild-chief would demand a fee for affixing the seal. The existence of such a prescriptive privilege would be by no means a strange feature of Japanese life. In harmony with the principle of settling all disputes, so far as possible, privately and within the family, were certain special privileges of enforcing justice privately, particularly where anything like a caste or guild was concerned. The most extended was that of Danzayemon, chief of the *Eta* (outcasts, the workers in skins), who had the power of inflicting even the death penalty on members of that caste (see Simmons, *Notes on Land Tenure*, p. 146). For the guild of the blind there were numbers of peculiar privileges, and this claim of the chief to affix his seal does not seem at all unnatural. 5. *Kashira*, the magistrate.

proposed to your superior that, although at the trial [the claim would still be treated as the deceased creditor's in the sense that, for instance,] the question of whether there were any illegalities connected with the loan should be examined, the chief of the guild ought not to manage the action of the widow or child, according to the report above-mentioned, but the action should be taken up and judged without requring the official seal of the chief of the guild, provided the instrument does not contain the phrase 'or to his apprentices'[1] or 'or to his fellow-members'[2] inserted [after the creditor's name]. [Sec. V.

After making this proposal to your superior you inquired of us. It is true, as you say, that the report handed up by Okada, master-blindman of the first degree, is not a regulation of the Magistrate's Court, but was made and presented in connection with the case on which you had asked for instructions,[3] and the custom stated in the letter was followed in subsequent practice; so that it cannot be treated as a mere rule made by the guild-chief himself. Moreover there is a decision to the same effect, on an inquiry by Takanawa, master-blindman of the first degree, in an action where the successor of a deceased creditor brought action on an instrument addressed to the deceased. We called these facts to your attention, and asked you whether you did not think it worth while to reconsider your opinion, and requested you, if you still regarded our practice hitherto as unjust and improper, to inform us of the method followed in [your] Court and send us a draft of the order proper to be made to the guild-chief. We made these replies and requests without consulting our superior. Now in your Court there are several records [bearing on the subject],—among others the official copy, in red ink, of the

1. *Deshi-uchi.* 2. *Nakama-uchi.* 3. The clerks had inquired, and the Magistrate had then ordered the opinion of Okada to be taken.

No. 97] report handed up by Takanawa, master blindman of the first degree, Bunkwa, XIII (Rat), 2, 11 (March 9, 1816), which reads as follows: 'Nagate, Lord of Bigo,[1] assented on a consultation to the proposition that a suit by the wife of a master-blindmam of the first degree or by any one under the control[2] of the chief of the blind-men's guild should not be taken up or disposed of without the official seal of the guild-chief.' There is also a record, for the 13th day, 3rd month, same year (April 10, 1816), of the fact that Shibasaki, master-blindman of the first degree, now chief of the guild, presented a petition asking an order that the complaint in a suit should bear the official seal of the guild-chief even where the suitor was an outsider,[3] provided he was a relative of the deceased, and that the petition was dismissed by the Magistrates, on the ground that it was not customary for the official seal of the guild-chief to be affixed on a complaint entered in the name of an outsider. Does it not, then, at least seem proper that the guild-chief's official seal should be affixed to the complaint in an action by the wife or son of the deceased creditor? You then, after examining the order made to the guild-chief [in that case], inquired further of your superior, and he directed further consultation with us. You then proposed, as the method of disposing of such cases, that where a money-loan instrument executed before the orders[4] of the Temple Magistrate[5] had not been renewed, an action by the wife or son of the deceased creditor should be taken up and adjudged like an ordinary action;[6] and you sent with your letter a copy of the orders to the guild-chief as recorded in answer to the inquiries of Takanawa and Shibasaki, master-

1. Town Magistrate. 2. *Shihai*. 3. *Shiroto*: one not a member of the guild. 4. *Moshi-watashi*. 5. The Lord of Bigo was Town Magistrate, but the writer perhaps is referring to him. 6. That is, probably, where the original loan was made before the above order (Bunkwa, XIII, 1816) and had not been renewed, the seal of the guild-chief would not be necessary; otherwise it would.

blindmen of the first degree. The red-ink copy of the document handed up by Takanawa, master-blindman, we noticed particularly, because there is a record to the same effect where an inquiry was made by the same officials during the magistracy of Tsutsui, Lord of Hizen. [Sec. V.

Thus the opinions of our two superiors are now agreed, after these consultations, as to the disposition of actions by the wife or child of a deceased creditor, except that we have not yet settled whether the guild-chief's official seal is necessary where suit is brought before the Temple Magistrate by persons living within the premises of military gentry.[1] We have therefore summoned the guild-chief, and he has answered that in all actions of the present sort, whether the persons live on the premises of military gentry or of townspeople, his official seal is customarily used.

The procedure as above agreed on should be communicated to the Temple Magistrate also, in order to avoid contradictory treatment of the same sort of action. We have communicated the above to our superior and he has directed us to consult you. Hence we make inquiry once more, enclosing the answers handed up by the guild-chiefs; the document sent to us by you, being only a copy, we have retained.

5th month, 19th day."

2. *Enclosures.*

(*a*.) "Answer in writing to the Court.

From the chief of the blindmen's guild,
Kosugi, master-blindman of the first degree :

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1. The general rule was that the Temple Magistrate took cognizance of cases coming from ordinary private fiefs. If the deceased blindman had lived within a nobleman's *yashiki*, it might be thought that the chief of the guild could not interfere in the management of the suit, as the lord himself might be interested.

No. 97] I reply as follows:

The question has been asked me whether the wife or son of a deceased master-blindman of the first or second degree, living on the premises of a family of the military gentry, is under the control of the guild-chief or not; and whether, when the wife or son brings suit on a loan of the deceased master-blindman, the official seal of the guild-chief is to be affixed to the complaint or not.

The children of a deceased master-blindman of the first or second degree, living within the premises of a military family or a town family, are under the control of the guild-chief while they are still in hopes of being taken into military service [or the like],[1] and their future is not yet settled; and when such persons bring suit to recover loans, etc., the complaint must bear the official seal of the guild-chief.

When an inquiry was made on the same subject, Tempo, X (Boar), 5, 3 (June 13, 1839), when Okusa, Lord of Awa, was in office,[2] the enclosed answer was handed up, and its receipt was acknowledged by Isogai Tetsunosuke,[3] Since that time I have followed the practice therein stated; recently, [for instance], when the widow of Mikami, master-blindman of the first degree, asked my official seal for an action for money due on a loan, I inspected the document and affixed my seal, that the action might be brought before the Magistrate. It has also been inquired what the procedure is where, in such a suit for money due on a loan, the deceased creditor lived without the Eight Provinces.[4] If one living without the Eight Provinces requested my official seal and indorsement for an action on a money loan, etc., I should after inspection affix my official seal.

1. This must be supplied in order to make the answer apply also to the townspeople, mentioned in the previous clause. 2. As Town Magistrate. 3. A clerk. 4. *Kwan-hasshu;* the eight provinces east of the Hakone mountains, surrounding Yedo, and the chief portion of the immediate dominions of the Shogunate family.

I enclose also a document containing an answer made by Takeyama, master-blindman of the first degree, chief of the guild, when directed to give his opinion by Suganuma, Lord of Shimotsuke, Finance Magistrate, Kwansei, XIII (Cock), 3, 5. [Sec. VI.

The above is in my opinion the procedure in such cases. I beg to make this reply.

Year of the Goat,

5th month, 15th day.

Kosugi, master-blindman of the first degree, chief of the blindmen's guild."

(*b*) "Order made to Takeyama, master-blindman of the first degree, by Suganuma, Lord of Shimotsuke, Finance Magistrate.

Case of Tachu, member of the household of Sen, widow of Genan, in Fukagawa post-town, Nakasendo,[1] deputy's district of Noguchi Tatsunosuke:

It was reported by the Deputy that the person above named has requested his approval of a petition that the Tsuchimikado House[2] deliver to him a divination-license, as the petitioner follows the occupation of fortune-telling.[3] A few days ago, therefore, I made inquiry of the chief of the blindmen's guild. Information was received [in reply] that the said Tachu had been disinherited by Toyonaga, master-blindman of the first degree, but still retains his membership[4] as a master-blindman. I therefore instructed Tatsunosuke to order him to prefer his request to the chief of the guild.[5] I now inform you of the above.

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1. The line of provinces running through the central part of northern Japan. 2. A firm or house probably having some special privileges in connection with this occupation. 3. This was one of the special occupations of the blind. 4. *Za* (lit., seat). 5. This may mean a request for the official seal or a request for the license. It would hardly have been cited unless the former had been the meaning.

No. 97] This order was handed down to Kitamura, master-blindman of the first degree, representative of the chief of the guild."

c. "Answer of Ishizuka, master-blindman of the first degree, to an inquiry of Okusa, Lord of Awa, Town Magistrate of the North.

Report.

You have inquired in regard to the necessity of the official seal of the chief of the blindmen's guild in actions where master-blindmen of the first and second degree, as as well as blindmen having no rank, have transferred their loans to children living in a separate family and the latter bring action for arrears due thereon.

During the life of the creditor, the official seal is affixed after examination [of the case], even though an actual transfer has been made. As to instruments of loan addressed to the wife [of the blindman], even in this case the official seal is to be affixed.[1] Where the children bring action after the death of the creditor, the chief of the guild affixes the seal, after examination of the subject of the action, if the plaintiffs have no instrument of transfer; but if they have he does not concern himself with the action.

I reply as above to your inquiry.

Year of the Boar,

5th month, 7th day.

Ishizuka, master-blindman of the first degree, chief of the blindman's guild.

The letter is sent by the hand of Inawo Kimata, temple-official, and its receipt is acknowledged by Isogai Tetsugoro."

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1. Even during the husband's lifetime, we may suppose.

SECTION VI.—ARREARS[1] OF JUDGMENT INSTALMENTS.

[No. 98] *Action for Arrears.*

A Reply to an Inquiry by an official of the fief held in charge[2] by Toda, Superintendent of Palace Maidservants.

Dated Meiwa, IX (1772).

"The matter of the Inquiry as to an action for arrears of instalments[3] due from Kichibei and 3 others, of Ichihara village, Mino *kuni*, defendants, to Chuzayemon, of Makuwa village, in the same *kuni*, plaintiff.

If the payment of the instalment as ordered is quite impossible, execution in bankruptcy should of course be ordered; but though as long a delay as possible should be allowed for obtaining the amount due, some amount at least, however small, should be paid in. If even this cannot be paid, then execution in bankruptcy should issue, ordering them to deliver up all their rice-land, upland, houses, residence-land, and family-belongings, even houses and residence-land in other fiefs, and even if only a small

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1. *Todokori-kin.* There is nothing to justify the compilers in making a special section for this subject. See Appendix to this volume. The term is constantly applied throughout all the cases to any sum in arrears. It is here used specially of instalments due by order of Court. 2. *O-azukari-sho.* See p. 22, note 4. 3. *Kiri-kin;* that is, instalments ordered by the Court.

No. 98] sum is realized, the plaintiff should be ordered to acknowledge satisfaction [of the claim]. An instrument of submission to this judgment executed by both sides should of course be filed in your office. An exact inventory of the rice-land, upland, houses, residence-land and family-belongings, should afterwards be drawn up in the presence of both parties and the village officials, and counter-sealed by them. Although the office of Chuyemon, headman, is not now forfeited, he cannot escape such a penalty unless some small amount is paid [on account]. It is better to tell him this and get him to pay some portion of the instalments [than to order him into bankruptcy].

The plaintiff should be informed that, when Isoji again acquires means, payment [of the amount still due] may be demanded of him,[1] and he should be ordered to insert this in the above instrument [of submission] and append his seal thereto."

[No. 99] *Where Instalment-Judgments have been rendered against Residents of distant Provinces, Parties' Relatives in Yedo may not appear as their Representatives.*

Dated Anyei, III (Horse), 11, 2 (December 4, 1774).

"Action on a money-loan against Arima Dainoshin by Jiroyemon and one other, representatives of Denjiro and one other, of Yoda village, Echizen *kuni*.

In the above action a judgment for payment by instalments was rendered on the 4th of last month, and

1. This makes it necessary to suppose that the "satisfaction" before spoken of means "satisfaction of the claim so far as paid,"—provided the Isoji here spoken of is the person in mind in the previous passages.

both parties were to appear at Court monthly.[1] But their homes are distant from Yedo, and the journey here and back cannot be accomplished under 30 days. The plaintiffs have therefore asked permission to appoint as their representative Heihachi, a relative, renter of the house of Bunyemon, in Yazayemon ward, Kyobashi [district Yedo]. If this request is granted, numberless others of the same sort will follow. The plaintiffs may use their servants, etc., living in Yedo as their representatives; but the request cannot be granted as to Heihachi."[2]

[No. 100] *Instalment-Judgments in Private Fiefs.*[3]

A Reply to an Inquiry made of the Lord of Kai.[4]
Dated Temmei, VIII (Ape), 12 (January, 1789).

1. *Inquiry.*

"When a money action is brought which [concerns parties] in our own fief only, may we after trial give judgment for payment by instalments? Or may judgment for payment by instalments be given only by the Government [Magistrates]? Furthermore, what should be the amounts of the instalments?

I beg to make private inquiry.
Obu Gengo,
Retainer of Honda, Lord of Bugo.
12th month."

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1. The defendant to pay, the plaintiff to receive the monthly instalment. 2. The feeling probably was, partly, that a member of the household or near relative would be more acquainted with the party's affairs and more easily fixed with responsibility for him, and, partly, that the free appointment of agents would tend to champerty, the traffic in claims. 3. *Shi-ryo;* fiefs outside of the Shogunate family's. 4. Magaribuchi, Lord of Kai, Finance Magistrate.

No. 100] 2. *Appended Reply.*

"When a money action is brought [which concerns parties] in a single fief[1] only, both parties should be examined, the instrument of debt inspected, and judgment rendered. First, an order of payment within 30 days should be made. If in that time the defendant proves unable to pay, an order for instalment-payment should be made. Where interest has been agreed on at a rate of more than 1 *bu* per 20 *ryo*, it must be reduced to that figure. In calculating, the intercalary months must be omitted. Days for payment of the monthly or yearly instalments should be fixed, and on those days the parties must be present in Court to deliver and receive the money. If the defendant fails to bring the whole amount fixed, he must be ordered positively to bring it on the next appointed day [in addition to the sum then due]; if the deficiency is only a slight one, it may be made up gradually on succeeding days. The above proceedings may be employed by you as well as by Government Magistrates. The amount of the instalments differs according to the total sum, principal and interest, in arrear. If you will notify me of the sum in any particular case before you, I will inform you without delay of the proper figures.

Year of the Ape,
12th month."

[No. 101] *Non-Payment of Instalments on a Debt of 200,000 Ryo.*

A Decision by the Chamber of Decisions, Full Session.

Dated Kwansei, IV (Rat), 8, 2 (September 17, 1792).

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1. *Ichi-ryo.*

"Action by Magoichi, of Nagabori ward, Fukagawa [district, Yedo,] for money due from Matsudaira, Lord of Mutsu. [Sec. VI.

The rule has been in past years to order 80 *ryo* [per month] as the instalment, where the amount due was in all about 10,000 *ryo*. Taking the same proportion, the proper instalment for the sum now in question would be a little more than 1520 *ryo* [per month]. But as the sum was a specially large one, a Full Session was held to consider the case, and it was decided to order that the [monthly] instalment for sums of about 200,000 *ryo* should be 1,000 *ryo*.

In the previous case of Yataro, of Hashido town, Senju, Bushu,[1] against Satake, Governor of Kyoto, a [monthly] instalment of 510 *ryo* was ordered for a total claim of 62,849 *ryo*, the rate being 80 *ryo* on 10,000. But as the amount due in this case is especially large, the order to the Lord of Mutsu has been decided upon as above."

[No. 102] *Actions on Money Loans.*

A Proposal of the Chamber of Decisions.
Approved Bunkwa, III (Tiger), 6 (July, 1806).

1. *Proposal of Law by the Chamber of Decisions.*

"Since the order of the last Serpent year, 9th month, that money actions were to be amicably settled,[2] the parties have come to a private settlement in all cases of money due and unpaid, and have reported these settlements to the Three Magistrates. There have been before the Town Magistrate numerous claims against the military gentry during the past 2 or 3 years. But in accordance with our

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1. Musashi *kuni*. 2. No. 13, *ante*, dated 1797.

No. 102] note appended to the Instructions of Matsudaira, Lord of Idzu, in the Serpent year, 8th month, we urged compromise upon both parties, setting forth the considerations on each side; so that there was not a single case which came to final judgment and an order for instalment-payment.[1]

Rubric. Since the Instructions of the Serpent year, 8th month, the parties in every suit seem to have thought that, if they did not settle privately, some severe penalty would be inflicted, and they have all settled their affairs by private convention. Thus there has been no final judgment rendered or penalty imposed,[2] as stated above, for about 10 years.[3] But if now judgment be rendered and instalment-payment ordered in 3 or 4 cases without inflicting the usual penalty,[4] the consequence would be that numberless actions of the same sort would be brought, and the people's integrity, uprightness, and sense of duty would deteriorate.[5]

But the actions brought lately are numerous, and in many cases, unless a regular judgment is rendered, there would never be any settlement. For this reason we have thought that it would be best to give regular judgments according to the legal precedents in cases that positively cannot be settled privately, and after ordering a private settlement within 30 days, then, [in case no

1. This order of 1797 relegated to private settlement claims arising before a certain date of that year. It did not apply to actions subsequently brought. The language here used might seem to imply the contrary; but the explanation is that the people followed the spirit of the order even in subsequent disputes, and after bringing suit, consented to compromise. 2. The penalty, that is, for not bringing in the instalment ordered. 3. See Note 2. 4. This must mean the penalty for bringing suit on a claim covered by the above order. 5. See p. 114, note 2.

settlement is made], to order payment by instalments of the amount remaining due. But there are certain fixed rules, enacted some time ago, [determining the amount of the instalment to be ordered in each case]. Now, though these rules should [usually] be followed, the amounts of the instalment have in many cases been reduced, by special agreement of the Magistrates, where it appeared that the defendant was actually unable to raise the fixed amount. Thus the rules have gradually come to be applied with some laxity; and, if now the debtors who fail to pay the full amounts as fixed by these rules are punished as the law prescribes, the number of persons thus punished would be very large, because the cases in which those amounts would be excessive are very numerous. Our conclusion is, therefore, that the best plan is to change the rules prescribing the instalment-amounts. As they are not a part of the 'Collection of Laws,'[1] it will be quite allowable to change them.[2] Moreover, [there need be no objection on the score of introducing an innovation unfamiliar to the people,] for the litigants are well acquainted with the instalment amounts [of lower figures which we have been ordering in most cases]. We propose that the yearly amounts set forth in the appended document be substituted for those of the old law. Henceforth, therefore, those who twice or thrice bring deficient amounts and thus violate directly the instructions of the Magistrates that the breach of private conventions and the disregard of upright dealing are no profit to any one, shall be punished as follows: For townspeople and [Sec. VI.

1. *Osadamegaki;* a codified collection of leading enactments (last revised in 1783); contained in Rudorff's *Tokugawa Gesetzsammlung.* 2. The Council, with the Shogun's sanction, could of course have changed them. The idea seems to be that such permanent legislation should be left untouched as far as possible and not lightly changed.

No. 102] farmers, the hand-stocks, as is prescribed in the 'Collection of Laws,' and, when default in the instalments still continues, an order of execution in bankruptcy; for military gentry, the Chief Seneschal or some high official should be summoned,[1] examined, and sent to the prison of the gentry, if they were the ones who had undertaken the obligation,[2] and where such a person fails to take the course urged on him by the Magistrate, you[3] would, on being notified of this, communicate to his lord; for persons in the service of temples, the same procedure as for military gentry.

Rubric. In loans of money the circumstances vary in different cases. Sometimes the debtor merely does not pay the principal or even the interest at the time agreed on. Sometimes they delay much longer, and even renew the instrument again and again, with the creditor's consent, engaging [in the new instrument] to pay the interest already due and unpaid, so that the amount of the interest ultimately received exceeds that of the principal. Some pay half the principal and interest, and are in arrears as to the remainder. In the case of sales on credit, the buyers often delay payment until long after receiving the goods; while others, the best customers of the seller, default finally in a small sum, after paying a number of yearly instalments of the amount due. Although the circumstances of these various cases differ so widely, it has seemed better to establish general rules, applicable

1. This would be true only of the higher gentry. 2. That is, the retainers who, as was the custom, had signed the instrument instead of their lord. But whether this clause applies only to the prison-sentence, or to the whole preceding part of the sentence, is not clear. 3. The Councillor.

alike to all, for the amount of the instalments to be paid, and we consulted accordingly, for the purpose of settling these rules. But the considerations bearing on the different amounts are complicated, and their determination is not without difficulty. Moreover, in many cases the parties, if they are aware of the sums fixed, would not act sincerely in regard to making and demanding payment,[1] and their integrity would suffer more than under the present state of affairs. For these reasons we have made the proposal contained in the main text.[2] As to principal and interest, if the debtor has already paid the principal and is in arrears with the interest, we shall urge the parties to settle privately, without regard to the time that has elapsed, and finally, if the debtor does not do so within a reasonable time, we shall order payment by instalments. However, in such cases the amounts of the instalments might be reduced somewhat, a reference being made in each case (for such instances would be few) for consultation [by the Chamber]. The Instructions of the Serpent year[3] left nothing to be desired, and we all assented to them; and subsequently we met and determined on a set of private rules for the treatment of the matters which formed the

1. That is, neither plaintiff nor defendant would settle privately on terms less favorable to either than those he knew he could get in Court; while each would put forth in Court all possible pretexts to obtain from the judge the greatest possible advantage as to the amount of the instalments. 2. *Hommon;* the body of the Proposal Probably that formed the first draft presented to the Chamber by one of its members, while the rubrics were afterwards inserted by general agreement. 3. This order preceded the order of No. 13, *ante*, by one month. See No. 111.

No. 102] subject of the Instructions.[1] We were to report again on these rules [for final sanction] if further experience seemed to require it. But in the last 10 years there has occurred no case so difficult of settlement as to require a regular judgment; and hence we made no report.

But in the last 2 or 3 years the cases which could not be privately settled have become numerous, and we have therefore made the proposal set forth in the main text.

Shall these actions be treated as above proposed? We desire to learn your will on this point: and append a copy of the Instructions of the Serpent year and also a draft of the proposed instalment-amounts.

Note, that following the usage of the Serpent year, we have provided for payment by instalments of the entire remainder due, where the debtor has paid any part of the claim. For example, though the debtor has paid only 1 *ryo* or 1 *bu* out of 50 *ryo* due, the creditor is ordered to accept payment by instalments. If the amount of arrearage is large the debtor cannot possibly pay it off within the 30 days; moreover, to settle how much should be paid down in each case [and how much left to be paid by instalments] is a matter of great difficulty. Hence the former rule is retained, that if any part whatever has been paid, the entire remainder is to be paid by instalments.[2]

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1. No. 13, *ante*. 2. The meaning of the postscript is this. Where judgment was given for the plaintiff, the defendant was ordered to bring the sum within 30 days; if he brought only a part, as usually happened, the instalment order [illegible] then issued. But the writers here propose [illegible] paid, this [illegible] interval which we [illegible] bring [illegible] shall be [illegible] the instalme[illegible] [illegible] shall be deemed [illegible] been paid.

2. *Schedule of Instalment-payments.*[1] [Sec. VI.

"Appended Document.

Revised Schedule of Instalment-Amounts, by the Full Chamber.

Amount Due.				*Whole Period of Payment.*
From 2 *ryo*	to	100 *ryo*	.....	About 10 years.
" 101	"	1,000 "	.....	" 15 "
" 1,001	"	3,000 "	.....	" 20 "
" 3,001	"	10,000 "	.....	" 25 "

With the above arrangement as a basis, the annual instalments for the various amounts due shall be as below.

Note, that the period in which payment is completed is graduated between the above limits for intervening sums, for the total period required should vary with the total amount due, as appears below.

The former instalment-amounts have been as stated below, and though [at first] they were employed by the Courts in ordering payment, many of the debtors disobeyed the orders and brought in smaller sums, so that in recent times permission to do this has come to be given. But hereafter, now that the amounts have been revised, the rules are to be applied strictly, and those who disobey are to be punished without fail. Henceforward the orders of payment are to be strictly enforced, notwithstanding [the spirit of clemency shown in] this reduction of the amounts.

Amount due.		*Monthly Instalment.*		*Finished, counting intercalary months, in*
		Old.	Revised.	
To	2 *ryo*	300 *mon*	1 *momme*	10 years (12 *momme* or 2 *shu*+ per year).

(*Appended Note.* We decided, on consultation, that instalments on small amounts due should be reckoned in silver, but that, where necessary, 100 *mon* of copper or iron money should be taken

1. This is all a rubric.

No. 102] as 1 *momme* of silver; for although in our own separate Courts it may do to concern ourselves with copper and iron money, in the Chamber of Decisions it is undignified and improper. Up to this time no order has been issued in the Chamber for a less sum than 1 *bu* in silver, even though the amount due was small, and, since the present 2-*shu* gold coin was struck, an instalment even of 2 *shu* has not been ordered. Henceforth instalments of as little as 2 *shu* may be ordered in the Chamber, but not of copper or iron money.)

Amount due.[1]		*Monthly Instalment.*		*Finished, counting intercalary months, in*
		Old.	Revised.	
To	6 *ryo* gold	2 *shu*	3 *momme* silver	10 years (36 *momme* or 2 *bu* + per year).
To	10 *ryo*	1 *bu*	5 *momme*	10 years (60 *momme* or 1 *ryo* gold per year).
To	20 *ryo*	1 *bu*, 2 *shu* to 2 *bu*	2 *shu*	13 years. 4 months.
To	35 *ryo*	3 *bu*	1 *bu*	11 years, 8 months.
To	50 *ryo*	1 *ryo*	1 *bu*, 2 *shu*	11 years. 2 months (4 *ryo*, 2 *bu* per year).
To	60 *ryo*	1 *ryo*, 1 *bu*	2 *bu*	10 years (6 *ryo* per year).
To	75 *ryo*	1 *ryo*, 2 *bu*	2 *bu*, 2 *shu*	10 years (17 *ryo* 2 *bu* per year).

1. The money tables will be found explained in Part I. For convenience the following notes are repeated. A *ryo* was divided into 4 *bu* and into 16 *shu*. It was also divided into 60 *momme*. Hence 2 *shu* ought to have been equivalent to $7\frac{1}{2}$ *momme*. At this time, however, the 2 *shu* piece was of somewhat higher value. The copper and iron money was reckoned in *mon*. In former times 4,000 *mon* was the standard equivalent of 1 *ryo*; hence 1 *momme* was equivalent to $66\frac{2}{3}$ *mon*. But the copper and iron money could not be kept up to that standard, and it was sometimes reckoned at even 10,000 *mon* to the *ryo*, or $166\frac{2}{3}$ to the *momme*. It would appear that the customary exchange at this time was about 100 *mon* to the *momme*; this at least is what the Court prescribes. An intercalary month came about once in 3 years.

Amount due.	*Monthly Instalment.* Old.	*Monthly Instalment.* Revised.	*Finished, counting intercalary months, in*
To 100 *ryo*	1 *ryo*, 3 *bu*	3 *bu*	11 years, 2 months (9 *ryo* per year).
To 150 *ryo*	3 *ryo*	3 *bu*	16 years, 8 months (9 *ryo* per year).
To 200 *ryo*	4 *ryo*	1 *ryo*, 2 *shu*	14 years, 10 months (13 *ryo*, 2 *bu* per year).
To 300 *ryo*	5 *ryo*	1 *ryo*, 2 *bu*, 2 *shu*	15 years, 5 months (19 *ryo*, 2 *bu* per year).
To 400 *ryo*	6 *ryo*	2 *ryo*, 2 *shu*	15 years, 9 months (25 *ryo*, 2 *bu* per year).
To 500 *ryo*	7 *ryo*	2 *ryo*, 3 *bu*	15 years, 2 months (33 *ryo* per year).
To 600 *ryo*	8 *ryo*	3 *ryo*, 1 *bu*	15 years, 5 months (39 *ryo* per year).
To 700 *ryo*	9 *ryo*	3 *ryo*, 2 *bu*, 2 *shu*	15 years, 1 month (46 *ryo*, 2 *bu* per year).
To 800 *ryo*	9 *ryo*	4 *ryo*, 1 *bu*, 2 *shu*	15 years, 3 months (52 *ryo*, 2 *bu* per year).
To 900 *ryo*	10 *ryo*	5 *ryo*	15 years (60 *ryo* per year).
To 1,000 *ryo*	20 *ryo*	5 *ryo*, 2 *bu*	15 years, 2 months (66 *ryo* per year).
To 1,500 *ryo*	20 *ryo*	6 *ryo*, 1 *bu*	20 years (75 *ryo* per year).
To 2,000 *ryo*	20 *ryo*	8 *ryo*, 1 *bu*	20 years 3 months (99 *ryo* per year).
To 2,500 *ryo*	30 *ryo*	11 *ryo*, 1 *bu* [2 *shu*	20 years, 1 month (124 *ryo*, 2 *bu* per year).
To 3,000 *ryo*	30 *ryo*	12 *ryo*, 2 *bu*	20 years (150 *ryo* per year).
To 5,000 *ryo*	45 *ryo*	16 *ryo*, 2 *bu* [2 *shu*	25 years, 1 month (199 *ryo*, 2 *bu* per year).
To 7,000 *ryo*	80 *ryo*	23 *ryo*, 1 *bu*	25 years, 2 months (279 *ryo* per year).
To 10,000 *ryo*	80 *ryo*	33 *ryo*, 1 *bu*	25 years, 1 month (399 *ryo* per year).

For sums of over 10,000 *ryo*, the full period shall be 30 years or upwards, the instalment amount being determined on special consultation in each case.

3. *Acknowledgment of sanction.*

"It has been ordered that the procedure in actions on

money-loans should be as proposed by us, and we hereby acknowledge the receipt of the order.

Year of the Tiger,

6th month, 23rd day (August 7, 1806).

Chamber of Decisions, Full Session."

4. *Rules enacted by the Chamber of Decisions, Full Session, for Actions on Money Loans.*

Dated Bunkwa, III (Tiger), 8, 12 (Sept. 23, 1806.)

"Our revised rules for actions on money-loans having been sanctioned in accordance with our proposal, the following [additional] rules have been determined on:

(1). Suits against military gentry. The complaint,[1] bearing the indorsing-seal[2] [of the Chamber], is to be served on the defendant, and an interval of 6 months ordered. If the parties do not settle privately within that time, they are to be summoned, with or without [further] demand by the plaintiff.

Note, that strict care must be taken not to delay longer than the 6 months, as otherwise [the defendant] would begin to think the matter of no importance.

(2). A joint-pleading[3] being had, all the considerations and circumstances must be carefully examined, and then the right and wrong[4] of the matter must be set forth to the parties. If at the end of 60 days more they have not settled privately, a formal judgment[5] must be rendered.

Note, that previous to the last Serpent year (1797) there were some cases in which the joint pleading

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1. *Sojo.* 2. *Uraban.* 3. *Taiketsu.* 4. This phrase has been already explained; it does not mean necessarily that the parties are told that one is quite right and the other quite wrong; the considerations on both sides are set forth, and each is urged to forbearance and concession. 5. *Seishiki no saiban.*

took place on the 4th day of the month and the formal judgment was rendered on the 21st day of the same month. But this practice is contrary to the provisions of the Instructions, and hereafter all cases must be tried as provided above. Still if a case clearly is one which cannot be privately settled [no matter how long an interval may be fixed], the former procedure may be followed. [Sec. VI.

(3). Where the defendant brings a less sum than the instalment ordered, he is to be summoned [to the Chamber] and ordered to pay the full amount. If he is really unable to pay, it would be well to summon other retainers, and after informing them of the facts give them the same orders.

Note, that previous to the last Serpent year (1797) the payment of a sum less than the fixed instalment might be made, on petition of the defendant, assented to by the plaintiff, where the Court permitted the partial payment and appointed the remainder to be paid at a future day. But henceforth the full sum fixed must be paid over to the plaintiff on the day appointed, without the delay of a single day; otherwise the dignity of the Court will suffer.

(4). As to the written pleadings,[1] the defendant's has contained a statement of the manner in which the money was borrowed and the provisions of the instrument [of loan], and an asseveration[2] that he will make no objection, whatever order of payment be made. The plaintiff's has contained a brief statement that the [defendant's] pleading is correct and a demand for payment, the whole being in the form of an indorsement[3] [on the defendant's pleading].

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1. *Kojo-gaki;* corresponding in meaning and purpose to *kuchi-gaki.* in No. 28, *ante.* 2. *Chikai,* oath. 3. *Oku-gaki.*

No. 102] This has been the form hitherto in use. Hereafter the origin[1] of the loan, the execution[2] of the deed, its contents, the amount of money, etc., must all be set forth in detail [in the defendant's pleading,] while the plaintiff, expressing his agreement with these statements, must indorse the pleading as before.

(5). Hitherto, when judgment was rendered and payment by instalment ordered, only the defendant was summoned and not his surety, etc. Hereafter the other retainers, as well as the accused, shall be summoned for the second day of appearance;[3] and, furthermore, at the time of issuing the order for payment by instalments, notice must be given to the other retainers that if the full sum fixed is not brought a severe penalty will be inflicted, and notice must be given by them to their lord;[4] and an instrument of submission to this order must be obtained from them.

(6). In regard to the mode of giving judgment, hitherto each case has been adjudged by the Magistrate before whom it was brought, without a general consultation of all; only those cases which involved the higher gentry, etc., as sureties,[5] were adjudged upon consultation after the case was laid before all. The same practice shall be followed in the future. If the defendant declares that the loan was contracted before the last Serpent year and the contents of the instrument do not show what the fact was, and no witness' name appear in it, the case

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1. *Genin.* 2. *Tetsuzuki.* This means ordinarily "method." But here it has a technical use, referring to the presence or absence of an official seal, if any is needed, and, perhaps, also the joint or sole nature of the liability, with other details of the mode of execution. 3. This would probably be the day of rendering judgment, and the order of instalment-payment would issue at the same time. 4. This is said of actions against the lower *samurai.* 5. That is, where they were the real debtors, a retainer being the nominal debtor. 6. And therefore entitled to the benefit of the Nullification Order of that year (No. 13, *ante*).

may ordinarily be adjudged after being laid before all of us, as in suits where one of the higher gentry is surety. But if the instrument makes out the loans to be of an earlier date, while it plainly appears [from the evidence] that it is of a date prior to that year, the decision must be that no formal judgment can be rendered and that the parties must settle the claim privately, in accordance with the Government Proclamation; and such a case must be laid before all of us. Where, also, it is specially difficult to reach a decision, the proofs on both sides must be laid before the other members and judgment be rendered on consultation of all. It was said in the Instructions[1] that where the defendant thrice in succession brings a sum less than the instalment fixed and we are obliged to summon his superior officer, his fellow-officer, his relatives, or the Chief Seneschal of his lord, and order them strictly to cause him to bring in the entire sum appointed, the case should be reported for instructions [by the Magistrate to the Council]. But in such a case we have only to warn them and order them as above, which is not equivalent to censuring or imposing a penalty; and hence it will be sufficient for the report [to the Council] to be made by one Magistrate only,[2] and not in the joint names of us all. [Sec. VI.

(7). It was also said in the Instructions that, where the borrower is actually prevented by unavoidable causes from paying the whole instalment due, his petition for delay, if well-founded, should be granted. We cannot, however, determine beforehand all the different circumstances that are to be regarded as establishing a sufficient excuse; nor are we to accept as satisfactory any and every excuse asserted by the debtor, for this would lead to mischievous results. As a rule, therefore, extraordinary calamities of Heaven,[3] such as inundation, fire, earthquake,

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1. See No. 111, *post*. 2. The one before whom the case was brought. 3. *Tensai*.

No. 102] etc., resulting in the ruin of more than half the debtor's income-fief, are alone to be accepted as excuses, others being rejected.

Note, that if such circumstances are asserted in excuse thrice in succession, a report of the case must be made for instructions [to the Council].

All suits relating to temples, towns, and villages should be disposed of in accordance with the foregoing rules, but without reporting them, as no directions are given with reference to them in the Instructions.

The above was determined on consultation in Full Session.

Bunkwa, III (Tiger,) 7, 4 (August 17, 1806)."

5. *Disposition of Actions against Military Gentry on Money Loans.*

Dated Bunkwa, IV (Hare), 6 (July, 1807).

"At a previous meeting of the Chamber of Decisions in Full Session it was decided that where a money loan action was brought against military gentry and a certificate of disagreement[1] was presented, both parties should be summoned to the Chamber of Decisions and formally examined. But henceforth, in such a case, both parties should first be summoned to the Court[2] of the Magistrate with whom the action is entered,[3] a preliminary examination held, and the parties urged to settle privately. If they then cannot agree, they should be sent to the Chamber of Decisions without delay.

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1. *Hadan-sho*; a certificate, given at the end of the 6 months already spoken of, that the parties could not reach an amicable settlement. See also No. 28, 8, Art. 7, *ante*. 2. The original is "official residence," where, in distinction from the *bugyo-sho* or Magistrate's office, trials of other than summary cases seem to have been held. 3. Of course all actions by townspeople against military gentry were cases for the Chamber, though they were entered with the Magistrate in whose jurisdiction the plaintiff was.

However, if at the time [of the preliminary examination] they request a postponement, it may be allowed twice; after that the case must be sent to the Chamber of Decisions. [Sec. VI.

Actions where a certificate of disagreement has been filed more than 6 months before may be sent to the Chamber of Decisions without any postponement."

[No. 103] *Non-payment of the first Instalment Due.*

A Reply by the Town Magistrates to a Consultation by the Finance Magistrate.

Dated Bunsei, VIII (Cock), (1825).[1]

1. *Consultation.*

"Those who do not bring in even a small part of the claim within the 30 days allowed for private settlement are of course guilty of disobedience to the order, and it is also proper to examine the defendant again in such a case. Now there have been some suits in my Court in which the defendant compromised with the plaintiff, an order of instalment-payment was issued, and yet the defendant failed to pay the instalment due the first month. How should such a case be treated? I beg to inquire the practice which you follow.

Year of the Cock,
3rd month."

2. *Reply.*

"When the compromise is effected within the 30 days and instalment-payment is ordered, the defendant

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1. No date appears; but this was the only year of the Cock while these Magistrates were in office.

No. 103] is required to pay at once, while in Court, the first monthly instalment; and, if he requests postponement, we refuse it and detain him, directing him to write and procure the money; when he has obtained the first complete instalment, we release him. As this rule has been strictly enforced, there have so far been none who have failed to pay the first instalment.

Such is our practice.

Year of the Cock,
3rd month.

Sakakibara, Minister of Imperial Revenues,
Tsutsui, Lord of Iga."

[No. 104] *Payment of Deficient Instalments.*

A Proposal by the Town Magistrates.

"In regard to the proceedings with reference to debtors who bring in deficient instalments, the Full Chamber laid a proposal before Makino, Lord of Bizen,[1] in Bunkwa, III (Tiger),[2] and it was approved. Subsequently numerous actions were brought, and, the judgments being rendered according to the circumstances of the cases, a certain laxity of practice came about, and some debtors brought deficient amounts when they were able to bring the whole. Henceforth, where the amount brought is deficient, the cases of the townpeople and farmers are to be disposed of as directed in the 'Collection of Laws.'[3] Military gentry are to be detained at the court and ordered to obtain the full amount. If the money is still delayed, a higher retainer or the Chief Seneschal is to be summoned and the duty of payment urged upon him. If the retainer occupies an office of low rank, the matter is to be urged

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1. Presiding Councillor of State. 2. No. 102, *ante*. 3. See p. 351, note 1, *ante*.

upon his relatives, fellow-officials, etc. If the default still [Sec. VI. continues, the retainer charged with the obligation is to be sent to the gentry's prison, and his lord is to be censured in some way. If these proceedings be followed, the dignity of the Court will not suffer. But in distant provinces they do not know what proceedings are being employed in the Courts of the Magistrate, and as the former proclamation[1] was issued several years ago, some may have forgotten it. We therefore requested,[2] in the Horse year, 4th month,[3] that these rules should be again proclaimed; and it was done. The proper proceedings in money actions were strictly followed during the next few years. But very recently this laxity has again come about, and debtors sometimes bring in deficient sums. We have therefore held a consultation on the subject. As the proclamations and regulations have already declared such conduct to be culpable, severe measures might well be taken with those who bring insufficient instalments. Nevertheless, the lending and borrowing of money is a transaction springing from mutual trust and fidelity, and no severe measure should be taken [to enforce the obligation] without first using counsel and persuasion. Moreover the lamentable condition of many—for calamities of Heaven have laid waste their fiefs and they are even unable to discharge their feudal duties—has justified special delay in their cases. For these reasons there has come about a laxity in enforcing the rules. It is positively necessary that this should be remedied and that the rules be enforced strictly. Yet if we proceed immediately after the laxity of the past to take severe measures, the result would be that numbers would be subjected to a penalty. The best plan is to summon all those of the military gentry who are in arrears, set forth to them the neglect of

1. Probably that of Bunkwa, III. 2. Probably of the Council. 3. See p. 366, note 2, *infra*.

No. 104] duty on the part of their lords and the culpability of the retainers themselves, and declare that henceforth, if a default occurs, the retainer will be imprisoned and the lords also will suffer some penalty. At the same time documents of submission shall be taken, sealed by themselves and sureties. After that all claims of the sort shall be enforced strictly according to the regulations already made.

Such are our conclusions. We have obtained the assent of the Full Chamber, and now make the above proposal.

Rubric.[1] Although strict measures [are well enough] in regard to the payment of instalments, yet in a great many cases the full amount is not paid in because the debtor is really unable to do so. Those who bring as much as half the amount due might be permitted, if the Court saw fit, a few days' delay. If less than half is brought, severe measures might be taken, according to the regulations. Furthermore, if we ourselves keep the regulations in mind, the granting of indulgence in special cases where it is proper need not of itself result in a lax enforcement of the regulations.

Sakakibara, Minister of Imperial Revenues,
Tsutsui, Lord of Iga."[2]

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1. The main document is a proposal to the Council, it would appear. The rubric would seem to be an insertion by the Chamber when the document was submitted to them. 2. No date is given, but we can determine with fair certainty from the names of the Magistrates. The earliest date when they were both in office was Bunsei, IV (1821), the latest, Tempo, VII (1836). The only Horse years in that interval were 1822 and 1834, and it is probable that the reference to the above Horse year is to the one next preceding the time of writing. In that case the document would date towards the end of 1836, because a few years are said to have elapsed since the order of the Horse year.

[No. 105] *Delay in Payment of Instalments.* [Sec. VI.

A Reply by Torii, Lord of Kai, Town Magistrate of Yedo, to a Consultation by his colleague, Abe, Lord of Totomi.

Dated Tempo, XIV (Hare), 5 (June, 1843).

1. *Consultation.*

"To the Kord of Kai,[1]
from Abe, Lord of Totomi.[1]

My predecessor, Toyama, Warden of the Palace Gates, some time ago, after consultation with you, issued strict orders as to the procedure in the case of instalment-judgments. But the rules have of late come to be applied with great laxity. On the 4th of this month the defendant[2] in an action already reported to the Chamber [and adjudged] brought in a sum falling far short of the instalment ordered, and I detained him at my Court, directing him to write and get the amount in arrears. From day to day I urged on him the reasonableness [of paying the claim]; but he replied invariably that of late his lord's fief had yielded little income, and that, as it was really difficult to raise the money, the amount brought had sometimes been deficient because he could not help it. It was of course lawful to take severe measures in such a case, according to the regulations already approved;[3] and, unless this were done, it would have a bad effect on other debtors. My intention is to take severe measures, according to the regulations, after reporting the case to the Council. The defendant had already paid half of one instalment, obtaining a postponement for the rest, and it was when he came again, at the end of the second term, without any

1. Both Town Magistrates. 2. Here a retainer appearing for a claim for which his lord is really responsible. 3. Perhaps those of the preceding documents. This case occurred before the reform of No. 28, *ante*, had been carried out.

No. 105] money and requested another postponement that I detained him and ordered him to get the whole amount then due. After daily urging him for about 10 days, without effect, I summoned higher retainers and finally the Chief Seneschal, and informed them of the circumstances and of their neglect of duty. But the obligation still remains unpaid. Unless something is done, I am resolved to send to the gentry's prison the retainer who stood in the place of his lord [in contracting the debt].[1] It would be undesirable that the proceedings in such a case should differ in my Court from yours, as to number of days, manner of imprisonment, etc.; and I therefore lay the case before you and request your opinion.

Year of the Hare,
5th month."

2. *Reply.*

"On a previous occasion your predecessor, Toyama, Warden of the Palace Gates, and myself, after consultation, issued an order as to the proceedings in case of delayed instalments; and of course the proceedings thenceforth were to be in accordance with those regulations. The urging of the higher retainers to payment, the imprisonment of the retainers responsible for the debt, etc., should be done just as you suggest. My own opinion is in accord, and my practice will be the same.

Year of the Hare,
5th month.
Torii, Lord of Kai."

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1. This was the most that could be done, as feudal sentiment would not allow hands to be laid directly on the lord. The means adopted were equally effective, for the reputation of the lord would be seriously injured by the imprisonment of the retainer, and in an extreme case the Shogun's displeasure might ensue; while the retainer himself was doubtless glad enough of the glory of suffering for his lord's sake.

[No. 106] *Revision of the Instalment-Schedule.* [Sec. VI.

A Resolution of the Chamber of Decisions, Full Session:

Dated Tempo, XIV (Hare), 6, 14 (July 11, 1843.)

"Terms of Payment for Amounts Due.

Amount due.					*Term.*
From	2 *ryo*	to	100 *ryo*	.....	About 10 years
"	101 "	"	1,000 "	.....	" 15 "
"	1,001 "	"	3,000 "	.....	" 20 "
"	3,001 "	"	10,000 "	.....	" 25 "

Monthly Instalments to be paid for the different amounts due, on the basis of the above scale :[1]

Amount due.			*Instalment, as fixed before [Bunkwa, III.]*	
To	2 *ryo*	.....	300 *mon*,	copper or iron.
"	6 "	.....	2 *shu*,	gold.
"	10 "	.....	1 *bu*,	"
"	15 "	.....	1 *bu*, 2 *shu*,	"
"	20 "	.....	2 " , 2 " ,	"
"	25 "	.....	2 *bu*,	"
"	35 "	.....	3 " ,	"
"	50 "	.....	1 *ryo*,	"
"	60 "	.....	1 " , 1 *bu*,	"
"	75 "	.....	1 " , 2 " ,	"
"	90 "	.....	1 " , 3 " ,	"
"	100 "	.....	2 *ryo*,	"
"	150 "	.....	3 " ,	"
"	200 "	.....	4 " ,	"
"	300 "	.....	5 " ,	"
"	400 "	.....	6 " ,	"
"	500 "	.....	7 " ,	"

1. This schedule, it will be seen, is the one in force before the reductions of Bunkwa, III, in No. 102, *supra*.

No. 106]

Amount due.		*Instalment, as fixed before [Bunkwa, III.]*
" 600 "	.....	8 " , "
" 700 "	.....	9 " , "
" 800 "	.....	9 " , "
" 900 "	.....	10 " , "
" 1,000 "	.....	10 " , "
" 1,500 "	.....	20 " , "
" 2,000 "	.....	20 " , "
" 2,500 "	.....	30 " , "
" 3,000 "	.....	30 " , "
" 5,000 "	.....	45 " , "
" 7,000 "	.....	80 " , "
" 7,000 "	.....	80 " , "

For sums of 10,000 *ryo* or over, a special consultation must be held in each case, the whole period to be 30 years or upwards."

[No. 107] *Money-Action Days.*[1]

"If instalment-judgments are rendered at the deputy's office,[2] after approval of the Magistrates, much confusion will ensue; for as there are no regular money-action days at the deputy's office, the parties will be appearing whenever they please, some demanding a summons, others wishing to pay. It will therefore be best to persuade a compromise in all cases where it is possible. For cases where it is not, days should be appointed on which the actions may be tried and instalment payments brought in.

Note, that they should not be the same as the money-action days of the Chamber of Decisions, viz., the 4th and 21st; the 3d, 23d, and 20th would do very well."

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1. *Kane-bi* (money days); those Court days on which money actions were heard. See No. 28, *passim*, *ante*. 2. *Daikwan-sho*; the Shogun's deputy who governed the rural districts.

[No. 108] *Payment of Instalments in Distant Provinces.* [Sec. VI.

"In regard to money-actions between persons of different fiefs, there is a precedent in which, after a judgment of instalment-payment had been rendered upon the expiration of the 30 days allowed for compromise, the delivery of the money was directed to be made at the office of the deputy,[1] and not in Yedo, because the plaintiff was a resident of a Shogunate fief. In an action for the purchase-money of rice sold on credit, between a farmer of Naruta village, Shinobu *kori*, Oshu,[2] as plaintiff, and a townsman of Soma castle-town, as defendant, a judgment of instalment-payment was rendered, after trial had, and the payments were formally made at the deputy's office[3] at Omori, in the same fief as Naruta village."[4]

[No. 109] *Instalment-Judgment for arrears of a Money-Loan.*[5]

An Action between Tozayemon, of Koya village, Nitta *kori*, Joshu,[6] *defendant*, and Tsuneyemon, of the same village, *plaintiff*.

Dated Temmei, II (Tiger), 11(December, 1781).

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1. *Daikwan-sho.* 2. A group of northern provinces. 3. *Jinya* (camp); a term commonly applied to the deputy's office. 4. This is an example of the manner in which the Shogunate fiefs were scattered here and there throughout the country, and served as centres of influence for the Shogunate authority. The document is not dated. It is probably a memorandum filed in the Finance Magistrate's Court. 5. The arrangement of the previous precedents in this Section was: 1. Regulations, laws, etc., in order of time; 2, the same, bearing no date; and now come, 3, reports of cases, in order of time. This is the general arrangement in all the Sections. 6. Yamashiro *kuni*.

No. 109] 1. *Inquiry by the Deputy.*

"Memorandum.

Tsuneyemon, of Koya village, Nitta *kori*, Joshu, deputy's district of Endo Hyoyemon .....*Plaintiff*:

and

Tozayemon, of the same village.....*Defendant*.

Amount loaned ..... 18 *ryo*.

Interest ..... 4 *ryo*, 2 *bu*.

This is at the rate of 1 *ryo* per month per 15 *bu*, and covers the 15 months from the last Ox year, 1st month, to the current Tiger, 3rd month.

Total amount, interest and principal...22 *ryo*, 2 *bu*.

Instruments, 2.

In the above case the allegations of Tsuneyemon were as follows. In the year of the Cock, 6 years ago, he had lent to Tozayemon 15 *ryo*, and in the Boar year, 3 years ago, 3 *ryo*, receiving two instruments of loans. The interest had been paid to the close of the Rat year, and the principal and remaining interest are due.

The defendant's statements agreed with those of Tsuneyemon, and I took from them a document counter-sealed by them and engaging to comply with whatever judgment the Court might render.

Thus the statements of the parties concur, and an order to pay should be given to the defendant. I inquire whether this is right, enclosing the 2 instruments of loan, 2 submission-documents, and the complaint,—5 sheets[1] in all.

Year of the Tiger,
10th month. Endo Hyoyemon."

2. *Appended Reply.*[2]

"As to the arrears due from Tozayemon to Tsuneye-

1. That is, 5 documents, each of one sheet only. 2. By the Finance Magistrate.

mon, the interest should be reduced to the rate of 15 per cent. a year, and then the whole amount due, viz., 21 *ryo*, 125 *mon*, be ordered to be paid in 30 days. A document of submission should be taken from Tozayemon [1] and delivered to Tsuneyemon. If the defendant does not pay within the above period, payment shall be ordered in monthly instalments of 2 *bu*; a day for the monthly payment shall be appointed, and the payment regularly made at your office on that day. Tie a blank sheet to the document of submission already given to Tsuneyemon, and let each amount as paid be entered thereon. On each occasion the defendant shall be directed not to fail in payment on the next regular day, and a submission-document to that effect shall be taken from him. [Sec. VI.

These rules must be strictly observed.

Year of the Tiger,
11th month."

[No. 110] *Money-Loan.*

An Action against Itakura Junoshin by Hambei, a townsman, of Kanefuki ward, Yedo.
Dated Bunkwa, XII (Boar), 4,21 (May 29, 1815).

1. *Inquiry.*

"In an action for arrears against Itakura Junoshin, by Hambei, a townsman, of Kanefuki *ward*, [Yedo,] the defendant, on being ordered to settle privately within 30 days, made a part payment of 7 *ryo* on the whole amount of 20,050 *ryo*. If the claim were for an ordinary amount, we

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1. This would indicate that a submission-document might be taken on the completion of the trial before judgment rendered, and also again after judgment rendered.

No. 110] would immediately issue the order for instalment-payment. But since Kwansei, IX, Serpent,[1] there has been no precedent of a judgment on a loan for more than 10,000 *ryo*. The appended document presented in the Tiger year with the memorial[2] states, as to the amount of the instalment, merely that in claims of 10,000 *ryo* and over, the full period shall be 30 years or upwards, and the amount shall be determined on special consultation in each case. Sums from 1,001 to 3,000 are to have a period of 20 years; from 3,001 to 10,000, 25 years; and the period of 30 years or more for claims over 10,000 *ryo* naturally follows as the next in the scale. But 30 years or more for upwards of 10,000 *ryo* does not mean that the term is to be about 30 years only, no matter how large the claim; and on this assumption we followed out the proportions already observed in the case of claims between 1,001 and 10,000 *ryo*, and obtained 45 years as the proper period for a claim between 20,001, and 30,000. Yet if this method is carried out and the full period of payment is increased in proportion to the amount due, the period will finally become an interminable one. The Court will be seriously inconvenienced [in keeping account of these long-standing claims]. Moreover, [the Court should not undertake to judge claims of such staleness]; for in the Instructions of the Serpent year[3] it is declared that, after the Proclamation was made in the 3d (Tiger) year of Yenkyo,[4] ordering that suits on claims arising during and after the Rat year of Yenkyo[5] should be taken up, [money] actions gradually increased during the next 50 years, and that therefore, as the lending and borrowing of money is a matter of private arrangement of the parties, actions on claims of long-standing need not be taken up. We think, therefore, that for all claims whatever of more than 10,000

1. The year of No. 13, *ante*. 2. No. 102, 2, *ante*. 3. The next number. 4. No. 5, *ante*. 5. Yenkyo, I, 1744.

ryo the full period for payment by instalments should be not more than 40 years, and that in the present suit the order should be as follows: Amount due, 20,050 *ryo*; monthly instalment, 50 *ryo*, or 600 *ryo* per year, the payments concluding in 33 years, 5 months. [Sec. VI.

We request to know whether we shall make an order to that effect."

2. *Court Memorandum.*

"In this action an order was issued on the 21st of last month to pay within 30 days. The defendant paid 7 *ryo* on that day, an order was issued to pay in instalments at 50 *ryo* per month, and a submission-document was taken."

3. *Document of Submission.*

"In regard to the loan without interest, made to me, on my lord's account, by Hambei, a townsman, of Kanefuki ward, an order to pay the whole amount within 30 days was issued, and I made a part payment of 7 *ryo*. An order was then issued to pay the remainder in instalments of 50 *ryo* per month. I shall without fail obey this order and not bring deficient instalments. I also acknowledge being instructed that if an insufficient sum is brought, severe measures will be taken with myself and the other retainers, and in addition the Chief Seneschal and other high officials will be summoned and examined. If such insufficient sum is brought, we will submit to whatever penalty is inflicted. But there will be no failure to bring each time the complete amount of the instalment.

Bunkwa, XII (Boar), 4, 21 (May 29, 1815).
Oshimoto Chusuke, retainer of
Itakura Junoshin.

No. 110] To the Chamber of Decisions.

I also am aware of the order issued to Oshimoto Chusuke. I shall inform my lord that, if a deficient instalment is brought, it would be highly culpable and severe measures would be taken; and I shall without fail see that no deficiency ever occurs. I hereby counterseal this document of submission.

Mita Kumajiro, retainer of
Itakura Junoshin."

SECTION VII—PRIVATE SETTLEMENT.[1]

[No. 111] *Private Settlement of Money-Loans.*

Instructions issued by the Council of State to the Three Magistrates.[2]

Dated Kwansei, IX (Serpent), 9, 10 (October 29, 1797).

"Memorandum.

Since the Proclamation of the 3rd (Tiger) year of Yenkyo,[3] ordering that money-actions on claims arising during and after the 1st (Rat) year of Yenkyo, [money] actions have increased gradually during the last 50 years or so. The lending and borrowing of money originates as a matter of private arrangement between the parties, and hence there is no necessity for [the Court's] undertaking and judging disputes of that sort. Such claims, therefore, already existing will not be taken up or adjudged; only those actions for money-loans, unpaid purchase-money, servants' wages, etc., which are brought [on claims arising] hereafter will be taken up, and tried. Even those actions in which already a day of trial has been appointed or a judgment rendered shall not be further heard or adjudged in any Magistrate's Court. Money-loans owe their origin to the integrity and mutual fidelity of the parties, and if they

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1. The cases of this Section ought properly to have been placed in Section I. See Appendix to this volume. 2. These are the Instructions which led to the passing of the Resolutions of the Chamber, No. 13, *ante*. 3. No. 5, *ante*.

No. 111] continue in the exercise of those virtues, all such transactions can be privately settled without difficulty, and the aid[1] of public officials need not be sought These truths are beyond doubt. Actions upon such claims must necessarily mean lack of virtue in the parties. The recent increase of such suits is due to the absence of generosity and gratitude among lenders and borrowers. The manners of the times are deplorable and show that morality is declining.

But it must not be thought, because of this enactment prohibiting the trial of claims, that the debtors are rid of their obligation and need not repay anything. Such an idea would be highly culpable. On the other hand, those [creditors] whose cupidity leads them to attempt by subterfuge to get their claims enforced in Court or falsely to make out old claims to be new ones shall be punished or censured. Furthermore, those [debtors] who hereafter, [on being ordered to pay,] repeatedly bring deficient instalments, shall on conviction be punished severely.

Year of the Serpent,
9th month.

The[2] above proclamation is now sent down to you, and is to be published at all the places where that of Yenkyo was published. Henceforth care must be taken in all cases to apply strictly the rules here issued. Even where an action is an old one and hence not to be taken up, yet if any of the parties appear to have been guilty of any wrongdoing, they are to be punished or censured, according to the rules. Those debtors who bring in deficient instalments, when ordered to pay, clearly disregard the dignity of the Court, and are to be censured; they should be told that if it

1. Lit., hand and mouth. 2. This paragraph is an addendum for the benefit of the Magistrates alone; the above being the Proclamation which they are to issue.

happens again they will be reported to the Government;[1] and if the default continues, all the facts must be reported, and we shall at once inflict punishment." [Sec. VII.

[No. 112] *Taking up of Actions on Money Loans, etc.*

An Oral Proclamation,[2] explaining the Instructions [3] concerning Private Settlement of Money Loans issued Kwansei, IX (Serpent), 9.

Dated Kwansei, IX (Serpent), 9, 12 (October 31, 1797).

"The meaning of the recent Proclamation concerning money loans, in which it is provided that such claims already existing will not be taken up or adjudged and only those claims which arise hereafter will be taken up and adjudged, is as follows: All claims on money loans, etc., arising before the close of the last 8th month will be rejected; but those arising on and after the 1st day of the 9th month will be taken up and adjudged. This should be proclaimed to the people, that no misunderstanding may exist."

[No 113] *Claims on Patent-Fund[4] and Temple-Fund Loans arising before the Private-Settlement Order.*

A Consultation by a Retainer.[5]

Dated Kwansei, X (Horse), 4 (1798).

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1 This is said for the higher military gentry. 2. *Kotatsu fure*—probably a proclamation to be published to the people orally. 3. No. 111, *supra*. 4. See p. 15, *ante*. 5. The source of the answer does not appear, but the writer is probably the Temple Magistrate.

[No. 115] *Whether a Claim for Money Loaned before the Private-Settlement Order, paid back after it, and borrowed again, is to be treated like a Claim on a re-written Instrument of Loan, and to be ordered for Private Settlement out of Court.*

An Inquiry made to the Chamber of Decisions by the Town Magistrate.

Dated Kwansei, XII (Ape), 12, 11 (January 25, 1801).

1. *Inquiry.*

"From Odagiri, Lord of Tosa.

Odani Shunto, town-doctor,[1] of Shitaya, Sakamoto ward, Block No. 2, brought a money-loan action against a member of the military gentry. At the trial he stated that he lent 8 *ryo* to the defendant on the 9th of the 8th month, Kwansei, IX, Serpent (October 28, 1797). After the Private Settlement Proclamation, the defendant borrowed 10 *ryo* again from him, at the same time repaying the 8 *ryo* with interest. The old instrument given for the 8 *ryo* was returned [to the debtor] at the time, and a new instrument for 10 *ryo* was taken, that is, after the Proclamation. Should such a case be treated in the same way as that of the renewal of an old debt in a new instrument? And if so, should actions on instruments renewed [after the Proclamation] be regularly taken up and adjudged? And in that case would not such a loose interpretation have bad private results? And therefore, on whole, should the not settlement be ordered?

I beg to inquire how the case should be disposed of.

Year of the Ape,

12th month."

1. *Machi-i.* The *samurai* physicians were never known as *machi-i*, this term being peculiar to the physicians of the common people. In a rural district the term was *kyo-i* or *ronin-i*.

2. *Decision.* [Sec. VII.

"It has been decided by the Chamber of Decisions, Full Session, that the case should be disposed of as indicated in the Inquiry."

[No. 116] *Actions for the Price of Meals Furnished.*[1]

An Inquiry made to the Chamber of Decisions by the Town Magistrate.
Dated Bunsei, X (Horse), 6 (July, 1827).

1. *Inquiry.*

"From Odagiri, Lord of Tosa.

Since the Proclamation relating to money actions[2] was made in the 9th month of the Serpent year, I have disposed of all suits in accordance with the Resolution[3] passed by the Full Chamber dealing with the practice in such cases or with the decision given [by the Chamber] in answer to special inquiry by me. But there has been no provision by either proclamation or decision for actions for price of meals, and now a case of this sort has unexpectedly been brought. This class is not mentioned in the 'Collection of Laws' among those in which the judgment is to be for payment in 30 days and then for instalment-payment. Claims for the price of meals differ in their nature from claims for money loans, hire of services,[4] salaries,[5] etc.; yet they resemble money loans in this point, that they arise through private

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1. *Han-ryo.* 2. No. 111, *ante.* 3. No. 13, *ante.* 4. *Yatoi-chin.* 5. *Kyu-ryo.*

No. 116] convention. Now in the 'Collection of Laws,' Art. 1 of the law concerning sundry expenses, travelling expenses, lodging-bills, etc., in actions by villagers,[1] if is said that where the action concerned himself alone, he must himself pay all the expenses, but, if he is unable to do so, the expense shall be divided equally among himself and his relatives; and in Art. 2 it is said that where the action concerned the defendant alone and he was ultimately executed or [otherwise] punished, payment must be obtained by execution in bankruptcy [against the defendant's property]. Should then the action for price of meals be taken up where the person to whom they were furnished was committed to the safe keeping of the house-holder by order of Court,[2] and even where he was a litigant voluntarily resorting to the house during a lawsuit concerning himself only[3]?

Year of the Horse,
12th month."

2. *Decision.*

"It was determined by the Full Chamber, Bunsei X (Horse), 6, 11 (July 4, 1827), that actions for the price of meals furnished before the Proclamation should be taken up where the debtor had by order of the Court been committed to the house for safe-keeping, but not in other cases, the claim being then one arising from private agreement only."

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1. Rudorff's *Tokugawa Gesetz-sammlung*, p. 71. This law regulated the burden of expense where villagers came to Yedo for litigation, whether as plaintiffs or defendants. 2. The 2d Article above cited relates to the case where the defendant during trial has been committed for safe keeping to some householder. The claim of this person for food furnished is the subject of inquiry. 3. That is, not as the representative of a village, etc.

[No. 117] *Lodging in a Debtor's House to demand Payment*[1] *of a Loan made before the Private-Settlement Order.* [Sec. VII.

A Report upon an Inquiry by Okabe, Steward of the Imperial Kitchen.[2]

Dated Tempo, XIII (Tiger), 6, 26 (July 2, 1842).

1. *Inquiry.*

"Inquiry in regard to the case of Matsugoro, representative of Ichibei, now ill, renter[3] of the house of Kitaro, of Iga ward, Yotsuya [district, Yedo], who[4] came to the quarters of my officer in the 3rd month of this year, for payment of a loan, presenting an instrument of loan.

6th month, 26th day.

Okabe, Steward of the Imperial Kitchen.

Matsugoro, representative of Ichibei, now ill, renter of the house of Kitaro, of Iga ward, Yotsuya, came to the quarters of my officers in the 3rd month of this year, and, showing an instrument of loan dated back in the 5th year (Serpent) of Temmei (1785), demanded its payment. He declared that the money had been lent to our family, through the mediation of Ichibei, by one Sandayu, his relative; that afterwards Sandayu fell into pecuniary difficulties, and was obliged to return to his native province; that before he left, he demanded payment of Ichibei, who consented to stand in the place of the family temporarily and repaid the whole amount; and that after some time Ichibei himself lost his property, and was hence obliged to demand payment. Inquiry was accordingly made, but no

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1. *I* (dwell, stay)-*saisoku* (demand, dun). 2. A territorial lord; the events below occurred at his residence in Yedo. 3. Ichibei. 4. Matsugoro.

No. 117] instrument could be produced in proof of the claim.[1] The answer was made to him that a letter would be sent asking inquiries in my home in the country,[2] and I bade Matsugoro return to his house until a reply came. But though the letter was at once despatched, no answer from our province has yet come. The delay is perhaps owing to the difficulties of learning anything about a transaction occurring so long ago. Subsequently Matsugoro and the wife of Ichibei dunned for payment on several occasions, and finally, when my official requested them to wait a while longer, as a second letter had been sent to our province, they refused and continued to demand payment. On the 11th of this month Matsugoro came again and repeatedly demanded payment, and upon being informed by my officials that he must wait a while until the answer, expected shortly, arrived from our province, he declared his intention of bringing suit in the Magistrate's Court and returned to his house. On the 16th the wife of Ichibei seized my sedan-chair as I was passing in the street[3] and thrust in a document containing some unintelligible statements. I therefore had her come to my house and lodge there, and summoning Kitaro, the house-manager [of the house which Ichibei rented], I told him of the matter,[4] and he promised to reason with her and her husband and induce them to wait a while longer. In a few days Kitaro informed me that Ichibei and his wife refused to accede to his request, though he had used all possible arguments with them; and Kitaro, because he did not care to rent his house to such persons, placed them in charge of Matsugoro, their house-surety,[5]

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1. The one above mentioned must have passed between Sandayu and Ichibei only. 2. The fief of the writer. 3. A favorite means of preferring a complaint where other measures had failed. It was strictly forbidden by law. See Simmons, *Notes*, etc., p. 126. 4. Because he was in some measure responsible for the conduct of his tenants. 5. The surety which every house-tenant was obliged to give.

renter of the house of Chosuke, of Choyenji-tani ward, [Sec. VII. Ichigaya [district]. But I thought that it would be better to allow them to continue to live in Kitaro's house and to make a private settlement of this old claim as soon as possible, and I directed Mohachiro, headman, at Block No. 1, Temma ward, Yotsuya, to manage it. He answered that he would do his best to bring it about and would inform me of the result. He did not answer for several days. I sent to find out the result. He had just directed them to go to the house of Kitaro again and wait till the answer came from my province; they had refused to do so, but Mohachiro sent word that they should be induced to do as I had asked. If I refuse to entertain the claim of this person, she is so lacking in mental balance that I am afraid they might resort to even more lawless means than stopping my sedan-chair. I therefore beg to inquire how the claim should be disposed of.[1]

6th month, 26th day.

Okabe, Steward of the Imperial Kitchen."

2. *Report of the Town Magistrate.*

"The Inquiry of Okabe, Steward of the Imperial Kitchen, was handed down to me [by the Council][2] with instructions to investigate the facts, and on perusing the documents I learned the following. Ichibei, now member of the household of Matsugoro, renter of the house of Chosuke, of Choyenji-tani ward, Ichigaya, Yedo, had lent some money to the family of the Steward of the Imperial Kitchen, in the 5th year (Serpent) of Temmei. As the loan had been made before the Private-Settlement Order of the 9th year (Serpent) of Kwansei, the creditor

1. The writer perhaps consults the Council not as a litigant, but as a lord having certain judicial powers of original jurisdiction in this case. 2. Probably.

No. 117] was well aware that a suit would not be taken up and adjudged by the Magistrate. So Ichibei's wife made a demand for payment, and, not receiving it, she took up her lodging in the residence of the Steward of the Imperial Kitchen, declaring that she would not return to her house until she got the money.[1] If the money was really borrowed by his family, the Steward of the Imperial Kitchen must make an engagement with them that he will do justice and return the sum at some future time; and he should represent to her, moreover, that her staying there could do no good and would injure greatly the name of the family. If she does not thereupon consent and leave, the Steward of the Imperial Kitchen should bring an action against her for making her demand by lodging on the premises, and ask for a trial. I think that instructions to this effect should be given in answer to the Inquiry.

In response to your request, I have examined the case and come to the above conclusions. I now return the documents you sent me.

Year of the Tiger,
6th month.

Torii, Lord of Kai."

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1. It does not appear in the first document that the woman went there in this manner and stayed. The inquirer represents that he invited her, which was probably the view he thought best to lay before the Council. The first sentence above about examining the document or documents (there is no means of distinguishing) causes a little doubt, in that it might imply that the Inquiry was the only source of information; but this seems out of the question. The point is important because this is the only case I have ever found of the practice of "sitting *dharna*," as it is called in India. How far indeed there was any such distinct practice in Japan is not certain; but the present case may fairly be deemed parallel.

[No. 118] *Private Settlement of Actions for Money-Loans, Wages of Labor,*[1] *etc.* [Sec. VII.

Instructions issued to the Three Magistrates by the Council of State.

Dated Tempo, XIV (Hare), 12, 14 (February 2, 1844).

"To the Three Magistrates.

Numbers of the families [of the military gentry] have of late suffered from pecuniary difficulties, and various means have been tried for relieving them. Government loans having been made as often as possible. But many are burdened with heavy loads of debt, and would not be able even for years to come to make payment. The Government, therefore, out of compassion for their unfortunate condition, and with the purpose of relieving them from their difficulties, has already decided to change the rule as to Government loans, and has ordered that money lent out to them up to the present time from the public treasury might be repaid by instalments covering a number of years.[2] Now lending and borrowing of money generally has its origin in a private arrangement of the parties, and hence there is no real necessity for taking up and adjudging disputes of that sort. Hereafter, therefore, actions for money-loans contracted before to-day are not to be taken up and adjudged; and only those claims which arise in the future are to be taken up and adjudged. Of course this applies also to claims for wages of labor,[3] hire of services,[4] salaries,[5] etc.

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1. *Tema-chin.* 2. This order is found in No. 91, *ante.* 3. *Tema-chin.* 4. *Yatoi-chin.* 5. *Kyu-kin.* The three terms seem here to indicate merely higher grades of labor. *Tema-chin* corresponds to our day-laborer's hire; *kyukin* to our monthly or yearly salaries.

No. 118] Note, that even those claims on which judgment has been rendered and payment by instalments ordered are not to be any further attended to by the Magistrates' Courts.

Interest is to be allowed only at the rate fixed by the Proclamation of the last Tiger year,[1] and the taking of higher rates under other names must not be allowed. As a rule the aid of the Court need never be invoked in disputes over money-loans, of however long standing, if lender and borrower meet each other with a true sense of their mutual duties.[2] Now although private settlement is hereby ordered, both parties must make the settlement with a true sense of their mutual duties, according to the principle of the Proclamation of the 9th year (Serpent) of Kwansei.[3] Debtors must not dishonorably refuse payment merely because an action on the claim will not be taken up in a Magistrate's Court; creditors must not attempt to evade the law by making the claim appear to be of a class which the Court takes up and adjudges. Those who violate the law in these ways shall be punished severely.

Where a judgment is rendered [in future] ordering payment by instalments, the defendant who repeatedly brings in deficient instalments[4] shall be examined and [if culpable] punished.

The above order is to be proclaimed in all the villages and wards.

12th month.

The above proclamation is issued; and it is to be published in the same places as that of the last Tiger year (1842), and that of the 9th year (Serpent) of Kwansei (1797)."

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1. No. 83, *ante*. 2. The creditor's duty would be to consider the circumstances of his debtor and have compassion on him if he had met with misfortune or his resources had diminished. 3. No. 111, *ante*. 4. The partial abolition of instalment-judgments, as shown in No. 28, *ante*, had not yet occurred.

[No. 119] *Proceedings under Private Settlement of Cl Loans, Wages of Labor, etc.*

A Resolution of the Chamber of Decisions, Full Session.

Dated Tempo, XIV (Hare), 12, 15 (February 3, 1844).

"Whereas an order has been issued that no claims for money-loans, unpaid purchase-money, wages of labor, etc., already contracted should be taken up and adjudged, and also that even those claims for which an order of payment has been issued and a day for rendering judgment appointed should be dismissed and no further enforced, the following rules shall be adopted for the trial and final disposition of actions before the Chamber of Decisions: Actions now pending trial or already ordered paid within a given period or ordered paid by instalments shall be disposed of by the presiding Magistrate[1] by a general order, as follows:—

'An Order has been issued by the Government that no claims for money-loans, unpaid purchase-money, wages of labor, etc., already contracted should be taken up and adjudged, and also that even those claims for which an order of payment has been issued or a day appointed for rendering judgment should be dismissed and no further enforced. All claims therefore now pending trial or already ordered paid within a given period or ordered paid by instalments will be no further enforced by this Court, and private settlements of claims before the Court need not be reported.'

1. *Kakari-bugyo*; that is, the one of the two or more Magistrates of each Court whose monthly turn it was to preside.

No. 119] In actions which have gone no further than the service of the complaint bearing first-seal[1] and indorsing-seal, an order to the above effect should be made when the parties appear on the appointed day, and the complaint should be taken in possession by the Court.

Note, that the complaint, not only in the above cases, but also in cases privately settled, should be taken from the plaintiff and brought to the Chamber, and there the indorsing-seals should be cancelled by all the members.

In actions where the order of payment has directed that the instalments be paid in at the neighboring deputy's office on account of the distance [of the parties] from Yedo, the Finance Magistrate is to direct the officers of the deputy to take possession of the term-payment instrument[3] and transmit it to the Magistrate. Actions [of the sort] under the jurisdiction of the Temple Magistrate must be attended to by him, and [the complaint] transmitted to the Finance Magistrate.[4] All term-payment instruments given on former occasions to parties should be taken into possession by the presiding Magistrate and sent to the Chamber.

Note, that even in the case of actions summarily disposed of[5] and not reported to the Chamber the same rule should apply.

Claims for house-pledge loans, wages of domestic servants, loans on pledges of reliable property,[6] bills of exchange, loans on land-pledge, rice-deposits, etc., shall be

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1. *Shohan*. See No. 13, *ante*. 2. *Uraban*. 3. *Kirikin nichigen shomon*; the document of submission to the judgment, executed by the defendant and given to the plaintiff, engaging to pay the amount adjudged due. 4. This seems to refer to actions between residents of private fiefs and Shogunate districts, which would come under the Temple Magistrate's preliminary jurisdiction. 5. *Te-kagiri*. See p. 101, note 3. 6. See p. 80, note 2.

taken up and judged, whether or not they were contracted [Sec. VII. before the Proclamation.

Note, that [alleged] house-pledge loans and rice-deposits should be treated as ordinary money-loans, [if] on investigation [they appear to be such in reality]. Ground-rent and shop-rent claims should be taken up, whether dating before or after the Proclamation, according to the principle laid down in the Proclamation of the 9th year (Serpent) of Kwansei.

Judicable claims are those dating from and after the 14th of this month; claims dating before that are non-judicable.

Claims for loans by the Government, by the Three Families,[1] by the Emperor, by royal abbots, from assistance-funds[2] belonging to temples of high rank or otherwise of special importance, or from funds belonging to a whole village or ward, shall be taken up, whether dating before or after the Proclamation.

Note, that loans professing to be of the above character should be investigated, if there is reason to believe that some portion of the loan is in fact an ordinary loan, and judgment be given accordingly, on consultation of all the members of the Court, all doubtful cases being reported [to the Full Chamber].

In accordance with the regulations, the instruments on which suit is brought are taken into possession by the Court when an order of payment is issued,[3] and hence, in order that the creditor may be able to effect a compromise [of a claim covered by the Private-Settlement Order], he

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1. See p. 144, note 2. 2. See p. 380, note 1. 3. Because thereafter the *uke-shomon* (submission-document) serves as the proof of debt and the basis of further suits. See p. 99, note 1.

No. 119] must have the instrument renewed by the debtor.[1] When a creditor complains that the debtor has refused to do this, the debtor should be urged by the Court to renew the instrument, in virtue of the [benefit reaped by him from the] issuance of the Private-Settlement Order. If he still refuses, some punishment, to be determined by a consultation of the Full Chamber, should be inflicted.

Note, that the renewed instrument must not bear date after the current 12th month; it must correspond to the old claim and must bear [the same date, viz.] a date before the 12th month.

The proceedings in all actions henceforth shall be in accordance with the Instructions[2] [of the Council] and this Resolution of the Chamber prescribing the rules for carrying them out.

The above resolution is agreed to."

[No. 120] *Private Settlement of Claims concerning the Shipping of Goods.*

A Reply by the Clerks of one Town Magistrate to a Consultation by those of another.

Dated Tempo, XV (Dragon), 8 (May, 1844).

1. *Consultation.*

"To Hara Kakuyemon, Esq.,
Nakata Shintaro, Esq.,
from Tojo Hachidayu,
Nakashima Kayemon,
Shima Kichiro.

We beg to offer our compliments. An action relating to goods shipped has been brought by Magobei, renter of

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1. Because, as has been ordered above, the submission-document is taken away by the Court. 2. No. 118.

the house of Kichirobei, of Block No. 3, Koami ward, [Yedo,] against Choyemon, renter of the house of Chuzo, of Homminato ward. The claim is really for the freight-money advanced[1] for the shipping of the goods. We heard some days ago that in your Department private settlement had been ordered in a recent action for freight-money advanced for the shipping of goods. If this is true, we shall also order private settlement in the above case without asking for any consultation between the Minister of Public Works[2] and your chief.[3] We therefore request an early answer. [Sec. VII.

3rd month, 28th day (May 15, 1844)."

2. *Reply.*

"To Tojo Hachidayu, Esq.,
Nakashima Kayemon, Esq.,
Shima Kiichiro, Esq.,
from Hara Kakuyemon,
Nakata Shintaro,
Hara Zenyemon.

We have read your letter. Last (Hare) year, 11th month (January, 1844), an action for freight-money was brought before your chief against Kumagoro, renter of the five-men-company's house[4] of Block No. 5, Hon-hatcho-bori ward,[5] by Hyojiro, member of the household of Kamijiro, renter of the land of Seibei, of Block No. 2, Funamatsu ward, and at the same time an action for wages advanced[6] was brought before our chief against

1. *Unchin genkin;* probably the transaction was an instance of the common practice of the advancing of funds by the wholesaler to the producer or some intermediary. Here the former seems to have advanced the cost of transportation and is now suing to recover it. 2. Town Magistrate. 3. The other Town Magistrate. 4. See p. 244, note 1. 5. Wherever no town is mentioned the locality is understood to be Yedo. 6. *Yatoi-zenkin.* See p. 389, notes.

No. 120] Kichiyemon, renter of the house of Chuhichi, of Kameshima ward, by Sahichi, renter of the house of Ubei, of Block No. 1, Koami ward. As the two actions were deemed to be entirely similar in principle, an order of private-settlement was issued for both, after your chief had consulted our chief in the 1st month of this year. You may compare these cases with the one now before you.

Such is our answer.

3rd month, 29th day."

[No. 121] *Proceedings in the Magistrates' Courts in Money Actions after the Private Settlement Proclamation.*

Reply by a Magistrate to a Consultation by Matsudaira, Governor of Kyoto.

Dated Tempo, XV (Dragon), 6, 14 (July 28, 1844).

1. *Consultation.*

"A Proclamation was issued in the 12th month of the last Hare year, ordering that thereafter no claims on money loans contracted before a certain day should be taken up and judged, and I beg to make the following inquiry with reference to it.

The rules adopted in my fief [in consequence of the Proclamation] are these. None of the following classes of claims when arising on or before the 15th[1] day of the 12th month of the Hare year, are taken up, while those arising on and after that day are taken up: Claims for [ordinary] money loans, unpaid purchase-money,[2] wages of labor, hire of services, loans from temple-funds, loans from patent-

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1. This is an error of the writer's; it should be the 14th. See No. 118. 2. For the vernacular terms and for explanations, see No. 5, *ante*.

funds, bills of exchange, earnest money, dowry-money, investment-money, loans secured by deeds of deposit of sundry utensils, or by deeds of sale of various articles, or by hypothecs of rice-field, upland, houses, or residence-land. Is this proper? [Sec. VII.

I think that the following claims should be taken up and ordered paid, whether dating before or after the Proclamation: Claims for ground-rent, shop-rent, domestic servants' wages, loans secured by hypothecs of shares[1] in the hairdressers' guild, or by deposit of chattels not in the form of a regular pledge, bills of exchange. Is this proper?

As to a claim for a sum of money deposited by a ground-tenant with the land-owner as security[2] and retained by the land-owner on the removal of the tenant: should this be treated on the footing of a pledge-loan? (Note, that the usual rate is that of 50 *ryo*, in security-money for a yearly rental of 30 *ryo*, and custom requires that the land-owner shall restore the security-money to the tenant when he removes). Should claims for loans on house-pledge, loans on land-pledge, and rice-deposits be treated in the same way? If so, should, nevertheless, claims purporting to be of one of these three classes, but not in reality so, be treated like the ordinary money loans of the Proclamation?

I make the above inquiries, as I wish to understand the whole subject.

6th month, 14th day.

Tsutsumi Yayemon, retainer of Matsudaira,
Governor of Kyoto."[3]

2. *Appended Reply.*

"Money actions in general, when founded on claims dating before the Proclamation, are not to be taken up.

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1. *Kabu.* 2. *Shiki-kin.* 3. Of course an honorary title.

No. 121] But claims on loans made upon the security[1] of rice-field, upland, residence-land, should be taken up and tried, if the contents of the instrument and the seals affixed are such as to make it proper. Claims for ground-rent, shop-rent, domestic servants' wages, bills of exchange, and loans on pledges of reliable property, are to be taken up and judged. Since the customs in regard to shares were abolished,[2] no loans secured by hypothec of shares in the hairdressers' guild have been taken up.

It is not likely that a security-money greater that the rent would be deposited with the land-owner; but if a claim of that sort appears on examination to be well-founded, it should be taken up and adjudged, whether arising before the Proclamation or not.

Claims for loans secured by house-pledge and land-pledge and for rice-deposits should also be taken up; unless they are not really of the above classes, when they should be rejected as ordinary money-loans.

The above are the proceedings employed by the Magistrates' Courts. In the private fiefs, however, all actions may be disposed of according to the ancient usages of the ruling family."

[No. 122] *Proceedings in Actions on Money Claims arising before the Private-Settlement Order, the Parties being residents of Provincial Fiefs.*

An Inquiry by a Retainer.
Dated Kokwa, II (Serpent), 2 (March, 1845).

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1. *Hiki-ate.* 2. This refers to the abolition of guilds, which had occurred a year or two before. See Part I.

1. *Consultation.* [Sec. VII.

"In the 12th month of the Hare year a Proclamation was issued, ordering that claims on money loans contracted before a certain day should not be adjudged, because such transactions originate in mutual trust and fidelity and should be quietly settled by the parties without the aid of the Courts; and claims arising on and after the same day were to be taken up and judged. Shall, therefore, the officials of my fief in the country[1] follow the same rule and dismiss actions on money claims arising before the 13th day[2] of the 12th month of the Hare year?

In accordance with the general regulation when the farmers and townspeople of my fief borrow money of residents of another fief and default in payment, and the parties are at odds and cannot settle the case privately, the action is brought after getting a certificate from myself and from the lord of the creditor's fief. But, according to the proclamation of the 13th day of the 12th month, all loans before that day must be settled privately between the parties, and no action upon them is to be taken up in a Magistrate's Court. Hereafter, therefore, where the loan is between parties of two different fiefs, and the officials of the other fief communicate with those of mine about the claim, may I refuse to give the certificate, by reason of the provisions of the Proclamation?

Are the claims in the two following lists to be taken up and adjudged, whether arising before or after the Preclamation?

(*a*) Money loaned on security of land-pledge, house-pledge, and pledge of reliable property.

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1. *Chiho no ryobun* (lit., provincial fief). 2. The day of the Proclamation was in fact the 14th. See No. 118.

No. 122] (*b*) Ground-rent, shop-rent, domestic servants' wages, price of rice deposited,[1] investment-advances for goods, etc.

I beg to make the above inquiries, because the officials of my home fief[2] write that they wish to know about these matters.

2nd month.

Miya Wasuke, retainer of
Ogasawara, Castle Inspector.

Postscript. In regard to a claim on an instrument asserted by the creditor to be an instrument of pledge, which is really not so, as it has no recital of the area of the land or of the amount of rice[3] (see the copy enclosed), and the land has not been delivered [into the creditor's possession]: should such a loan be treated as an ordinary loan?

I beg to make this inquiry, because the officials of the home-fief have written that they wish to be informed on this point.

Miya Wasuke, retainer of
Ogasawara, Castle Inspector."

2. *Enclosed Instrument.*

"Government assessment, 4 *koku*, 1 *to*, 4 *sho*, 5 *go*. In the Government territory,[4] the plots[5] of Yayemon and Shichiyemon.

Being unable to pay seven-tenths of my land-tax, I have delivered over the above amount[5] of land and have at the same time received the price and have paid off the

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1. *Azukari-mai daikin.* See the later Chapter in this Part on "Deposit." 2. *Hon-ryo* (lit., principal fief), referring to his provincial estates; his letter probably was written during his periodical stay in Yedo. 3. *Kome no tori-daka.* This means either the amount to be taken (*tori*) by the pledgee as rent from the pledgor as tenant or, more probably, the amount of the tax-rice in default (*tori-mai* being a popular name for tax-rice). 4. *Go-ryobun*, the domain of the Shogunate family. 5. *O-taka.*

taxes therewith. The foregoing statements are true; and [Sec. VII.
therefore from the ensuing Ape year (1836) you may use the land as you please; but whenever the price shall be repaid, you are to return the above amount of land and the instrument. For future testimony I give this instrument, countersealed by the surety and by all the villagers.

Tempo, VI (Goat), 12 (February, 1836).
Jiyemon, chief headman,
Soyemon, surety,
Chuyemon, head-farmer,[1]
Niyemon, general representative,[2]
of Bantojima village.
To Zenyemon, Esq.,
of the same village."

3. *Appended Reply.*

"(1). As regards actions between residents of your fief and another fief, when the officials of the other fief communicate the claim to you, your officials may refuse your certificate, according to the provisions of the proclamation,—if it is in reality a claim which the Proclamation requires to be privately settled.

(2). Claims based on loans secured by land-pledge, house-pledge, and pledge of reliable property, as well as on ground-rent, shop-rent, domestic servants' wages, and bills of exchange, are to be adjudged and payment ordered, whether or not they date from before the Proclamation. But claims alleged to be of the above sorts, but proving on examination not to be so, are to be treated on the footing of ordinary money loans. Claims for investment-advances for goods are not to be taken up and adjudged if they date from before the Proclamation.

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1. *Cho-byakusho.* For some notes on the classes of people in a village, see Simmons, *Notes, etc.*, p. 113. 2. *Sodai;* of all the farmers. His duty here is not clear.

No. 122] (3). On examining the enclosed copy of the instrument, it is clear that it is not a true instrument of pledge, but is merely an instrument making certain cultivated land the security for a debt; but on this matter the inquiry must be made of the Finance Magistrate, as the contractors are residents of a village [in the Government domain]."

[No. 123] *Disposition of an Action in which the Date of the Loan is disputed, each Party offering several Witnesses in Support.*

A Decision[1] of the Chamber of Decisions, Full Session, upon a Consultation by the Town Magistrates.

Dated Kokwa, II (Serpent), 9 (October, 1845).

1. *Consultation.*

"From Toyama, Warden of the Palace Gates,
Nabeshima, Minister of Public Works.

Where, in actions on money-loans brought since the Proclamation, the defendant alleges that the instrument was originally given before the Proclamation and was renewed after the Proclamation,[2] and the plaintiff alleges that the loan was originally made after the Proclamation, and neither offers any proofs, the dispute should be determined according to the tenor of the instrument; and this has been the practice. But sometimes a particularly difficult case arises, as when the defendant brings forward written proofs of an indisputable character; and such cases have been determined according to the opinions reached by each

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1. *Sodan-sumi* (settlement of a matter consulted about).
2. Because such a claim was deemed to be covered by the Proclamation.

Magistrate. As their opinions may differ, this may result [Sec. VII. in different decisions for similar cases. Is it not better, therefore, to adopt rules such as the following for the determination of these cases?

(1). Ordinary instruments of loan, bearing date of the 12th month, 14th day,[1] or later:—When, in an action on such an instrument brought after the Proclamation, the creditor alleges the claim to be a new one, and the debtor alleges it to be an old one [renewed], and offers as proof a written receipt for part-payment[2] on the old instrument, and when the contents and seals of the old instrument or the receipt thus offered are trustworthy and corroborate the defendant's statements, the claim should be treated as an old one and not taken up. According to the decision[3] of the Full Chamber, in Anyei, IV (Goat), 12 (January, 1776), directing that 'letters, receipts, pass-books,[4] and other documents offered by the defendant as proofs should not be accepted without careful examination as to genuineness; when they bear the principal-seal[4] [of the plaintiff], they must be deemed authentic, and an order of payment in yearly, or monthly instalments should accordingly issue; if the proper seals are not affixed or the amounts, etc., do not agree with the facts of the pending claim, the documents dating before the Proclamation should not be accepted as proof [that the claim is an old one] and the claim should be deemed a new one. The action must therefore be taken up, and the debtor's allegations rejected.

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1. That is, of Tempo, XIV. 2. *Uchi-kin.* 3. *Hyoketsu.* 4. *Kayoi-cho.* The customer was given this by (usually) the retail seller, and at each purchase an entry was made in the pass-book. A similar entry was made in the customer's ledger-account as kept by the seller, and the edge of the pass-book being placed in such a way that the two entries made a continuous line (which the perpendicular lines of writing made quite easy), the seller's clerk impressed his seal so that half appeared in each book.

No. 123] (2). Claims on instruments in which the amount is composed of an old and a new loan, the former made before, the latter, since the Proclamation :—

In Kwansei, XII, Ape (1800), while Odagiri, Lord of Tosa, was in office [as Town Magistrate], some money-loan actions against military gentry were brought by Otani Shunto, town doctor,[1] of Block No 2, Sakamoto ward, Shitaya [district], in one of which he alleged as follows: In the 8th month of the Serpent year of Kwansei (1797) he had lent 8 *ryo* to the defendant on his request. After the Proclamation[2] he again lent him 10 *ryo*, the debtor at the same time paying back the interest and principal of the 8-*ryo* loan of the 8th month, and the creditor returning the old instrument and getting a new one. Thus the loan was really a new one dating since the Proclamation. We had a consultation upon the case, and decided as follows: 'The instrument was to be regarded as a renewed one, and the loan as one made before the Proclamation; for if this claim were taken up and adjudged, all claims on renewed instruments must by the same principle be taken up; hence the claim should be rejected, and the parties ordered to settle privately.' The rule established by this decision was afterwards applied in a number of cases, and it seems, at the first glance, to be a proper one. But suppose that one lent 200 *ryo*, for example, before the Proclamation, and then after the Proclamation lent 100 *ryo* more and took a new instrument of loan for 300 *ryo*; it would certainly not be right to treat this entire claim as an old loan re-written. In the above case the additional 2 *ryo* is no doubt a small sum, but the 100 *ryo* in the example just given is a large amount [and shows that the question may become an important one]. Though it may have been reasonable [in that particular case] to regard the instrument

1. This case is No. 115, *ante*. 2. Which appeared in the 9th month.

as merely a renewed one, it would be unjust invariably to [Sec. VII.
treat all such claims[1] as old ones dating before the proclamation and to order private settlement. It seems to me, therefore, that the following rule would be better: Where it appears clearly from the instrument of loan or other documents that a portion of the amount claimed was lent before the Proclamation, and an additional sum after the Proclamation, the claim should be rejected, to the extent of the former amount; but the claim for the latter amount should be taken up and judged. Where the defendant's assertions [as to the date of the claim] are corroborated by no written proofs, the claim should of course be treated as a new one.

We ask your opinion on the above subjects.

Year of the Serpent,

9th month."

2. *Decision.*

"The rules proposed by you for the determination of the two cases stated in your letter seem to us eminently proper, and we are willing to adopt them. Hereafter, then, we shall all observe these rules.

Year of the Serpent,

11th month.

The Temple Magistrates.

The Finance Magistrates."

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1. In the above case the alleged new loan of 10 *ryo* may really have been a mere re-writing of the interest and the 8 *ryo* principal, especially as the alleged payment and re-lending occurred at the same time and could have been nominal only. But a real instance of a new loan, as in the supposed case above, should be treated as new, to the extent of the new advance.

[No. 124] *Application of the Private-Settlement Order outside Yedo to Actions in Towns and Villages of private Fiefs.*

A Decision of the Full Chamber upon a Consultation.

Dated Kokwa, II (Serpent), 12 (January, 1846).

1. *Consultation.*

"In the 12th month of the Hare year the Proclamation was issued that claims on money-loans dating before a certain day need not be taken up and adjudged. May the provisions of the Proclamation be adopted in the towns and villages of the various private fiefs of the provinces as well as in Yedo? There is no difficulty in applying them where the parties are residents of the same fief; but where they are residents of different fiefs, what is to be done? Are we to understand that the Government Proclamation applies throughout the whole country? The officials of our lord's home-fief[1] are desirous of being informed on these points; and we therefore make the above inquiry.

7th month.

Kamihara Sakunojo, retainer of
Myura, Lord of Bigo, and
Toyama, Warden of the Palace Gates."[2]

2. *Report to the Full Chamber.*

"From Nabeshima, Minister of Public Works.

A retainer of Myura, Lord of Bigo, has inquired as to the applicability of the Proclamation's provisions [to private fiefs]. Claims by residents of Yedo against residents of the provinces, [if they date before the Proclamation],

1. See p. 400, note 2. 2. Doubtless he indorsed the inquiry, handing it on just as it was.

should of course not be taken up. But Kyoto and Osaka are known to have their own special usages, and hence their officials need perhaps not follow the rule of the Proclamation. All other towns and villages, whether of private fiefs or of the Shogunate domain, should obey the Proclamation; so that deputies and esquires should not take up claims dating before the Proclamation and the parties should be ordered to settle privately. Should this be the rule? There has never been any provision relating to the applicability of the Proclamation, not even at the time of the Kwansei Proclamation.[1] I therefore consult you upon the point. [Sec. VII

Year of the Serpent,
8th month."

3. *Communication by one Town Magistrate to the other.*

"To the Warden of the Palace Gates, from Nabeshima, Minister of Public Works:

An inquiry having been made by a retainer of Myura, Lord of Bigo, as to the applicability of the proclamation respecting money loans, I presented a written consultation to the Full Chamber, after having talked it over with you; and the Full Chamber replied as in the enclosed document. An order to this effect should be given to the retainer of the Lord of Bigo.

I hereby communicate to you the decision, enclosing the document.

Year of the Serpent,
12th month."

4. *Reply of the other Magistrates.*

"Actions in the Four Provinces,[2] West Provinces,[3] and the Middle Provinces[4] under the jurisdiction of the Kyoto and Osaka Magistrates should be disposed of

1. This seems to be an error. See No. 13, Art. 3, p. 23, *ante*.
2. *Shikoku*. 3. *Saikoku* (i.e. Kyushu). 4. *Chugoku*. The Sanindo

No. 124] according to the regulations peculiar to those districts; and the same is true for other fiefs which have ancient usages of their own. All others must follow the provisions of the proclamation. Hence, as to the inquiry of the retainer of Myura, Lord of Bigo, actions between residents of his fief in Sakushu[1] and residents of Osaka must be regulated by the rules of the Osaka Magistrate's Court; but when actions between residents of his fief and residents of other private fiefs or parts of the Shogunate domain are brought in Yedo [before the Temple or Finance Magistrate], the Magistrates should order private settlement and not take them up, following the Proclamation. Thus, though the provisions ought rightly to be applied throughout the country, the districts which have ancient usages of their own, such as Kyoto and Osaka, must be regarded as exceptions; in all other parts the proclamation must be observed.

This is our opinion. Should not an answer to this effect be returned?

Year of the Serpent,
12th mouth,

The Temple Magistrates,
The Finance Magistrates."

[No. 125] *Arrears of a Loan made by the Family-Temple of the Lord of Owari previous to the Private-Settlement Order.*

A Reply by the Temple Magistrate to a Consultation by the Town Magistrate.

Dated Kayei, II (Cock), 10 (November, 1849).

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and Sanyodo provinces are sometimes designated as "Chugoku." But not all actions there arising were under the Osaka and other Magistrates (see No. 48, *ante*). Only actions by plaintiffs in those provinces againt residents of the Kyoto and Osaka districts were under the jurisdiction of these Magistrates.

1. Mimasaka *kuni*.

1. *Consultation.*

"To the Temple Magistrate,
from Toyama, Warden of the
Palace Gates:

The temple-fund [of the family-temple] of the Lord of Owari consists of money given by the favor of the Lord Reisen-in,[1] from his money remaining after his death, to the Jisho Temple, of the Tendai sect, at Ichigaya [district, Yedo], for memorial services. So whenever a payment has been made of a loan from this fund, notice has been given at the lord's mansion in Ichigaya, and the transactions [connected with these loans] have been accomplished in the presence of the proper officers [of the Lord of Owari]; moreover, wherever payment is not made, an action has been brought in the Magistrate's Court, as the instrument of loan provides. Now, in spite of the fact that the instrument dates before the Private-Settlement Order of the Hare year, 6[2] years ago (1844), should payment be ordered?

Year of the Cock,
10th month."

2. *First Reply.*

"The Loans by the Jisho Temple of the Tendai sect, at Ichigaya, were made before the Private-Settlement Order, and hence I agree with you that it is difficult to order their payment. However, until I know the nature[3] of the claim and the terms [of the contract] and see the instrument o loan, I cannot give you a final answer.

Year of the Cock,
10th month.
Honda, Minister of the Imperial Household."[4]

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1. *Reisen-in Sama;* the posthumous name of the donor. 2. Five, by our reckoning. 3. *Myomoku.* 4. Temple Magistrate.

No. 125] 3. *Letter from the consulting Magistrate.*

"In accordance with your directions I send the instruments for your examination.

Toyama, Warden of the Palace Gates."

4. *Second Reply.*

"On examining the copies of the instruments enclosed by you and reflecting on the whole subject, my opinion is that although the loans from the temple-fund in question, which was founded many years ago in the interest of the family of the Lord of Owari, are not by any means to be regarded as ordinary loans, yet it does not seem proper to order payment of them for this temple, in spite of the fact that the loans were always made under sanction [of the Lord of Owari]. I think that an order of payment should not be made, because the instrument is dated before the Private-Settlement Order. I therefore return you the documents enclosed.

Year of the Cock.

11th month

Honda, Minister of the Imperial Household."

5. *Documents enclosed.*

a. "Money Deposited.[1]

Gold, —— *ryo:*

Interest at 5 *bu* silver [per month] per 1 *ryo* gold.[2]

As our lord is in great need of money for public purposes, he finds himself greatly obliged to your Temple

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1. *Azukari;* this term was a less mercenary one than the term "loan," and hence was preferred as one giving the loan the conventional appearance of a friendly transaction. 2. A *bu* or *fun* was one-tenth of a *momme*, and 60 *momme* made a *ryo;* the rate was thus 10 per cent. a year.

for the assistance rendered, after he had long sought fruitlessly elsewhere. Your assistance having been extended, he engages to keep the money in charge safely. Payment shall be made without fail, both principal and interest, by the 20th of the next 12th month, with the rice-harvest[1] of this income-fief as security. If the amount is not paid when due, the rice-harvest shall be delivered by the villages at the market-price. An instrument signed by the villages is hereby given, as well as an instrument with the signatures of our lord and ourselves; these to be valid notwithstanding any change of lord, office[2] or generation.[3] Payment shall diligently be made. For future testimony this is given. [Sec. VII.

——— period, ——— ———,
——— month, ——— ———,[4]
——— day. retainers of
——— Family.

To the Officials of the Jisho Temple."

[Indorsed]

"The contents of this document are correct.
——— ———."

b. "Our lord ———, being now in urgent need of money for public purposes, after spending much time in making fruitless requests elsewhere,[5] heard that a loan could be had from the temple-fund donated by the family of the noble lord[6] at Ichigaya, and has been permitted to receive

1. *Mononari-kome.* 2. *Yaku.* 3. *Dai.* That is, the obligation would bind the successor in office and the successor in family mastership. 4. Apparently intended for the names of the retainers acting for the borrower. 5. This phrase, expressing a sentiment which we should try to conceal, seems to be a conventional attempt to make it appear that the borrower has not gone to the lender as to a professional money-lender, but after much fruitless effort has turned to him as a friend. 6. *Oyakata*, a term often applied to persons of rank.

No. 124] a sum on deposit. The depositary acknowledges the receipt of the amount named in the enclosed document. This money is from the fund for memorial services for the lady Jisho-in,[1] the mother of the lord Reisen-in, donated by him out of profound regard for his mother, from money left by him.[2] For this reason the proper officials are to come, on the occasions of payment, and witness the transaction, notice being given to the noble lord beforehand. Failure to pay would necessarily hinder the celebration of the memorial services, and therefore we shall never ask for delay. The notice that suit will be brought in the Magistrate's Court on the day when the money is due, [if it is not paid], has been communicated to our lord, and he has declared himself satisfied and has signed his official seal on the enclosed instrument. As a further security we give this instrument also.

—— month.

——— ———,

——— ———.

representing both public and private interests[3] of

—— —— Family.

To the officials of the Jisho Temple."

c. "Instrument handed up.

—— *kuni*, —— *kori*,

—— village.

Total assessed production, —— *koku*.

This year's tax-rice, —— *koku*.

The esquire ——, possessed of the above amount, has borrowed —— *ryo*, from your Temple for household

1. The temple was thus named after this person, a not uncommon occurrence. *Jisho-in* is the term here rendered Jisho Temple; the *in* is the same in the names of both temple and person. 2. *I-kin*. 3. These two retainers represented the departments dealing with these affairs.

purposes. The above rice-harvest is to stand as security[1] for this loan. If payment is not made, the above security-rice shall be sold off, and the loan paid from the proceeds as agreed. In case the proceeds are insufficient, the payment shall be completed by an increased taxation assessed according to the assessed production of the villagers. For future [testimony] this instrument is given, sealed by the villagers. [Sec. VII.

—— *kuni*, —— *kori*,

————,

representative of the farmers,

————,

company-chief.

————,

headman.

—— period,

—— month, —— day.

To the Officials
of the Jisho Temple.

The above instrument given by the villagers is correct. They are aware that arrears of the loan are to be paid from the harvest-rice as we have already directed. If any land in the village becomes waste, so that it supplies no rice, other villages shall supply an equivalent amount, and no delay will occur in the payment of the rice as agreed.

——— ————,

——— ————,

retainers of

—— —— Family."

[No. 125] *Private Settlement of a Claim for Money paid on behalf of Another.*

A Reply by the Clerks of one Town Magistrate to a Consultation by those of another.

Dated Tempo, XV (Dragon), 8 (September, 1844).

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1. *Hikiate.*

No. 125] 1. *Consultation.*

"To Hara Tsuruyemon, Esq.,
Nakata Shintaro, Esq.,
from Tojo Hachidayu,
Nakashima Kayemon,
Matsuura Yeinosuke.

We desire an answer to an inquiry. We congratulate you on the diligence shown in the discharge of your duties, and wish you every prosperity. We are at present engaged in the trial of a suit for money paid on behalf of another[1] previous to the Private-Settlement Order. In the last Hare year your chief, on being consulted as to a claim for money paid on behalf of another, replied that the term of payment should be double that employed for [ordinary] money-loans, prayer-fund loans, and house-pledge loans. Since, therefore, it is regarded as a money claim, we think it would be proper to order private settlement, whether the agreement was for interest or not. This is our opinion; but in order to make sure that this is right, we are waiting until we hear from you.

8th month, 8th day."

2. *Reply.*

"To Tojo Hachidayu, Esq.,
Nakashima Kayemon, Esq.,
Matsuura Yeinosuke, Esq.,
from Hara Tsuruyemon,
Nakata Shintaro.

We understand clearly the purport of your letter, and on the point about which you consult us we think as you do. Such claims have been regarded as subject to private settlement. Such is our reply.

Year of the Dragon,
8th month, 20th day."

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1. *Tatekaye-kin.*

[No. 126] *Claim based on Dishonest Refusal to pay a Loan Contracted before the Private-Settlement Order.* [Sec. VII.

A Reply by the Temple and Finance Magistrates to a Consultation by the Town Magistrate.[2]

1. *Consultation.*

"Consultation,
by Sakakibara, Minister of
Imperial Revenues.

Jirobei, renter of the shop of Yasubei, of Block No. 5, Minami-hatchobori [ward] ... *Plaintiff;*

Tanabe Yeisuke, and 2 others, retainers of Hondo Kuranosuke, Councillor of the First Rank,[1] and

Sakurai Sodayu, and other, retainers of Mizuno Tojiro, of the company of Mizuno, Lord of Hoki, of the Palace Library Watch ..... *Defendants.*

The above action was brought by the plaintiff Jirobei; and at the trial it appeared that during the lifetime of his father Jirobei, to wit, in the 6th year (Tiger) of Kwansei (1794), that his father had advanced[3] money, amounting to more than 3,700 *ryo* to the Lord of Yamato, the predecessor of the present family-master, Honda Kuranosuke, for household expenses. The said Jirobei brought action, in the 12th month of the 8th year (Dragon), before Odagiri, Lord of Tosa, then [Town] Magistrate; and while the trial was in progress, the Private-Settlement Order appeared,

1. See p. 170, note 3. 2. Cited from "*Shoji-dome-sho.*" No date appears. But we may assume that the Serpent year (the date of the letter) is 1821. There were Two serpent years in this Magistrate's incumbency, 1821 and 1833; and the case would hardly have dragged on from 1797 to 1833. 3. *Shiokuri.*

No. 126] in the 9th month of the succeeding year[1] and the plaintiff died; so that an order for private settlement was issued. The amount of the claim was so large, the plaintiff declared satisfaction would be improbable, even though all the defendant's property were sold; and so desiring to have a trial, on the ground of the defendant's dishonest conduct, in the 10th month of the above year the present plaintiff renewed the suit before the Lord of Tosa, but pending trial it was privately settled that a sum of 50 *ryo* should be paid down, and the remainder be paid in rice-proceeds[2] at certain periods or in yearly instalments; and so leave to withdraw was granted, after the plaintiff had received an instrument bearing the informal seal of the Lord of Yamato and of the Under Minister of the Interior, his vassal and relative and the predecessor of the above Mizuno Tojiro, and countersealed by the retainers of the Under-Minister. Subsequently some payments[3] of rice-proceeds were made, though not as much as the contract required. But since the last Rat year[4] no payment has been made, and all requests have been fruitless. The detention of such a large amount is said by the plaintiff to be causing him great embarrassment, and the delay of the past years has been a source of much loss; for the second time therefore he brings this action founded on the dishonest conduct of the defendant. It was found impossible to consult the record of the trial before Odagiri, Lord of Tosa, because all the official records had been destroyed by fire. Now the Private-Settlement Order of Kwansei, IX (Serpent),[5] declares that any attempt to repudiate a loan entirely, because of the Court's not taking up the claim, is entirely unlawful, and that where complaint is make of a dishonest refusal to pay, the

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1. 1797; see No. 13, *ante*. 2. *Kome-kin;* proceeds of the sale of rice. 3. *Teate* (lit., assistance). 4. 1816, probably. 5. No. 111, *ante*.

defendant should be severely censured. Moreover, the [Sec. VII.
Instructions to the Full Chamber[1] provide that punishment shall be inflicted, on conviction, wherever the terms of the Proclamation are disobeyed. Although, then, some payment has been made on account, shall we nevertheless have a trial on the ground of dishonest refusal, and summon the defendant again for this purpose? Or, on the contrary, as there were deliveries, though in small amounts, of rice-proceeds up to the last Rat year, shall we refuse to grant a trial, because of the large number of actions, even for very old claims, which would be brought on similar grounds (for the present claim is based on a mere private loan)?

We ask your opinion.

Year of the Serpent,[2]

6th month."

2. *Reply.*

"From

The Temple Magistrates,

The Finance Magistrates.

The action in question was brought by Jirobei, renter of the shop of Yasubei, of Minami-hatchobori [ward], Block No. 5. On the trial it appeared that during the lifetime of his father Jirobei, to wit, in Kwansei, VI (Tiger), the latter advanced a sum of money, amounting to over 3,700 *ryo*, to the lord of Yamato, the predecessor of the present lord Honda Kuranosuke, for household expenses. The said Jirobei brought suit before Odagiri, Lord of Tosa, while the latter was [Town] Magistrate, in the 12th month of the 8th year (Dragon) of the same period. While the trial was in progress, the Private-Settlement Order appeared in the 9th month of the succeeding year, and the plaintiff died; so that an order for private settlement was issued.

1. No. 111, *ante*, the additional paragraph. 2. 1821, probably.

No. 126] The amount of the claim was so large, the plaintiff declares, that full satisfaction would be improbable, even though all the defendant's property were sold; and so, desiring to have a trial on the ground of the defendant's dishonest conduct, in the 10th month of the above year the present plaintiff renewed the suit before the lord of Tosa. But pending the trial it was privately settled that a sum of 50 *ryo* should be paid down, and the remainder be paid in rice-proceeds at certain periods or in yearly instalments; and so leave to withdraw was granted, after the plaintiff had received an instrument bearing the informal seal of the Lord of Yamato and of the Under Minister of the Interior, his vassal and relative and the predecessor of the above Mizuno Tojiro, and countersealed by the retainers of the Under Minister. Subsequently some payments of rice-proceeds were made, though not as much as the contract required. But since the last Rat year no payment has been made, and all requests have been fruitless. The detention of such a large amount is said by the plaintiff to be causing him great embarrassment, and the delay of the past years has been a source of much loss; for the second time therefore he brings this action founded on the dishonest conduct of the defendant, and asks for the summoning of the retainers of both Kuranosuke and Tojiro. It was found impossible to consult the record of the trial before Odagiri, Lord of Tosa, because all the official records had been destroyed by fire. Now the Private-Settlement Order of Kwansei, IX (Serpent), declares that any attempt to repudiate a loan entirely, because of the Court's not taking up the claim, is entirely unlawful, and that where complaint is made of a dishonest refusal to pay, the defendant should be severely censured. Moreover the Instructions to the Full Chamber provide that punishment shall be inflicted, on conviction, wherever the terms of the Proclamation are disobeyed. Although, then, some payment has been made on account, shall

we nevertheless have a trial on the charge of dishonest refusal, and summon the defendant for this purpose? Or, on the contrary, as there were deliveries, though in small amounts, of rice-proceeds up to the last Rat year, shall we refuse to grant a trial, because of the large number of actions, even on very old claims, which would be brought on similar grounds (for the present claim is based on a mere private loan)? [Sec. VII.

Such is the case on which you have consulted us, and we understand it clearly.

Now it was provided in the Instructions of Kwansei, XI (Serpent),[1] that henceforth there was to be in the Magistrates' Courts no taking up, adjudging, or fixing of payment-terms [in certain classes of claims]. It is therefore improper to take up this action alleging dishonest conduct in regard to a claim arising before the Proclamation of the Serpent year. In the 6th Article of the Proposal made in Bunkwa, III, Tiger (1806),[2] relating to the revision of the procedure in money actions and sanctioned [by the Council], it was provided that (as the defendant claims in this case) although the instrument put forward in proof by the plaintiff is of a date subsequent to the Serpent year, yet if the claim is really of a date prior to that year and the plaintiff's assertion is only an unlawful pretence, the claim shall not be taken up; and that where the question is specially difficult to decide, it should be referred to a session [of the Full Chamber], with the allegations of both parties. According to the allegations of Jirobei, a payment has already been made privately, while the trial was pending, in the 12th month of the last Serpent year. Since then, the loan was made before the the Proclamation, if this claim is taken up on the ground of a dishonest refusal to pay, according to the contract, there will come up numbers of old claims of all sorts, as you have stated.

1. No. 111, *ante*. 2. No. 102, 4, *ante*.

No. 126] If we look at the action, on the other hand, as for arrears of rice-proceeds which the retainers of the Lord of Yamato unlawfully refuse to pay (the deliveries having been made up to the Rat year, according to the instalment contract but none having occurred since then), [we reach the same conclusion.] There was a certain arrearage at the time of the Proclamation; subsequently 50 *ryo* were paid down, and the remainder was agreed to be repaid by yearly instalments. This is not one of the cases in which it is difficult to decide [whether the claim dates before or after the Proclamation], and no trial should be permitted.

Year of the Serpent,
6th month."

[No. 127] *Proceedings in Actions brought since the Private Settlement Order.*

An Itemized Inquiry by Clerks of the Town Magistrate, with appended Replies.[1]

Letter.

" To Hara Tsuruyemon, Esq.
Nakata Shintaro, Esq.
from Tojo Hachidayu,
Nakashima Kayemon.

We learn with pleasure from your letter that you are in good health and diligent in the performance of your duties. There were, it seems, a not inconsiderable number of cases undecided and still pending trial in your Court at the time of the Private-Settlement Order, and, as many of them were in your opinion not affected by that law, you have enclosed memoranda of these cases, to learn our practice in those cases and our opinion thereon. This

1. This document seems to belong shortly after the Private-Settlement Order of 1844.

we clearly understand and we shall try to reply. But as [Sec. VII.
our opinions are substantially the same as your own, we
append our replies to your memoranda.

1st month, 18th day."

2. *Items of Inquiry.*

"(1.) The dowry-money brought by an adopted son was by agreement changed into a deposit.[1] On an action for repayment, a private settlement was concluded, part payment being made, and the remainder being rewritten as a deposit. Should not this claim be ordered for private settlement?

'As you suggest, a sum of this sort, an adopted son's dowry-money or deposit, though it has been rewritten in a new instrument after action brought, should be ordered for private settlement.'

(2). Buildings and chattels were put into hypothec and an instrument given bearing the seals of the owner and his relations; is not this claim to be treated as an ordinary loan, according to the Town Proclamation of Yenkyo,[2] and therefore ordered for private-settlement?

'As you suggest, private settlement should be ordered, agreeably to the Town Proclamation of Yenkyo; this is our opinion.'

(3.) Where one who owned a share in the rice-millers' guild and had made the required character-security deposit[3] brings action and in the same complaint[4] demands restoration of the deposit (on account of the Government's abolition of guilds)[5] and of a loan, is not the claim for the loan to be separated from the claim for the deposit, and the former alone to be ordered for private settlement?

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1. *Cho-kin. Cho* means literally "collect," and *chokin* means sometimes "savings." But it seems here to be used as a general rwod for deposits, *azukari-kin.* 2. No. 5, *ante.* 3. *Shiki-kin.* 4. *Isshi* (one sheet of paper). 5. See Part I.

No. 127] 'As you suggest, where the claims for the deposit and for the loan are sued for in the same complaint, the claim on the loan only should, in our opinion, be ordered for private settlement.'

(4).[1] Action by rice-dealers[2] holding memoranda[3] promising delivery of the ticket-rice[4] at the storehouse of Matsudaira, Lord of Mutsu, against the storehouse-merchants[5] whose names the tickets[6] bear.

Note, that there is no other instrument than the ticket. As to this ticket-rice, the proceedings approved some time ago were as follows. First, against the tax-rice coming to the storehouse are drawn tickets, each representing 20 bales. This rice is then bought by the brokers[7] by secret-bid auction,[8] [tickets being given to the buyers, and] the agreement being that rice shall be delivered to them at any time in exchange for the tickets. The successful bidder[9] pays the price to the storehouse-officials within a certain number of days. He then resells the tickets to the dealers at the current prices,[10] withholding a discount[11] of one or two *sho* for every *ryo* [of the purchase-money]. The dealers then in the same way sell these tickets among themselves, and sales are made even in the country villages.

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1. These next inquiries are somewhat difficult to interpret. The reader should first refer to what is said in Part I on the Rice-Trade. The transaction appears to be this. The rice-dealers buy the tax-rice through merchants entrusted with the matter by the lord's storehouse officials and possessing a semi-official character. Tickets good for a certain amount of rice are received by the dealers, and bear the indorsement of the storehouse-merchants. The latter are now sued for non-delivery. 2. *Komeya-domo.* 3. *Kakitsuke.* 4. *Kitte-mai.* 5. *Kura-moto chonin.* 6. *Kitte;* apparently the same as *kakitsuke, supra.* 7. *Nakagai;* who stand between the store house-merchants and the dealers. 8. *Nyu-satsu.* 9. *Raku-satsu no mono.* 10. *Toki* (time)-*soba* (market price). 11. *Waki* (side)-*mai;* i.e., a small portion as a commission.

(5). The case being the same as above,—when the purchase-money has been paid and the proper number of tickets given, an instrument[1] is handed over which bears the counterseal of the lord's retainers and engages to deliver the rice itself[2] at any time in exchange for the tickets. There is also a subsidiary instrument[3] given in which it is stipulated that if the purchase-money is paid back [by the officials to the rice-dealers] within a term of months, the rice will be sold back[4] by the dealers [to the officials]; that in the case of such re-payment interest shall be added at the rate of 60 *momme*[5] for every 100 *ryo* of the principal; and that if there should be delay [in this re-payment], the rice should be sold to the brokers who had negotiated the tickets, and the return of the purchase-money be exacted [from them by the rice-dealers].[6] An instrument [to the same effect] is also given by the brokers [to the rice-dealers]. Now [payment of the above purchase-money] being delayed, the dealers have brought actions against the above officials. [Sec. VII.

(6.) The case being the same as above,—certain rice-dealers have bought the un-hulled rice to be produced in the same fief by a transaction made at the storehouse, and have paid the purchase-money in advance, stipulating that the rice shall be delivered between the 3d and 8th months of the following year, and receiving an instrument countersealed by the officials of the storehouse. But the rice not having been delivered, they have brought suit for it.

Note, that the instrument does not provide for interest.

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1. *Shomon.* 2. *Sho* (actual)-*mai* (rice). 3. *Soye-shomon.* 4. *Uri-modosu.* The transaction was apparently an advance of money by the dealers, and the rice served as an hypothecary security. This seems to be the significance of these provisions. 5. 60 *momme* = 1 *ryo.* 6. The brokers had indorsed the instruments of sale or the tickets, and thus the officials turned over the rice to them and left them to settle with the dealers.

No. 127] Now in the cases described in the foregoing three items, shall we order private settlement of those claims which bear interest (for they are only ordinary loans) and treat those bearing no interest in analogy to claims for rice bought and left on deposit?[1]

'As to these three items relating to the ticket-rice of Matsudaira, Lord of Mutsu, we think that the claims bearing interest should be treated like [ordinary] money loans and private settlement ordered, and that those bearing no interest should be treated like claims for rice bought and left on deposit.'

(7.) In cases of money-deposits, is private-settlement to be ordered where the money was originally a loan by one person or by several jointly, which has been renewed in the shape of a deposit,[2] the old document being shown in proof?

'As you suggest, a loan made solely or jointly and then changed into a deposit should, we think, be ordered for private settlement.'

(8.) Are claims for advances for wages of labor,[3] as analogous to earnest money and investment-money,[4] to be ordered for private settlement?

'As you suggest, claims for advances for wages of labor, as analogous to earnest-money and investment-money, should be ordered, we think, for private settlement.'"

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1. *Kai-azuke-mai.* This transaction is dealt with in Section III of this Part. See also Part II, p. 88, Echigo *kuni.* The Private-Settlement Order did not extend to deposits. 2. *Azukari-kin.* 3. *Yatoi-chin.* 4. *Shiire-kin.*

SECTION VIII—SUNDRIES.

[No. 128] *Payment of a Loan refused because of Loss of the Instrument by Fire.*

A Decision by the Chamber on a Consultation by a Magistrate.

Dated Bunsei, XIII (Tiger), 9, 2 (October 18, 1830).

"An action was brought for arrears due on an advance of money,[1] and after the receipt of a part-payment[2] a private settlement was reached, and an instrument given engaging to pay the remainder in a certain mode. This instrument, however, was destroyed by fire. The debt had been entered in the [plaintiff's] books, with a note of the fire; subsequently payment was refused. On comparing the claim with the settlement-document made out at the conclusion of the former action, the amounts, etc., are found to tally, and the statements of both parties agree on these points. Is judgment to be given in such a case, notwithstanding the destruction of the instrument?

Appended Reply. There is no precedent like the case you state. But as the transaction was entered in the miscellaneous-entries book[3] (for the claim is for a

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1. *Shiokuri-kin.* 2. *Ate;* the same as *teate* (lit., assistance). 3. *Tsuke-komi-cho.*

No. 128] money-loan in the nature of unpaid purchase-money),[1] even though the entry is not signed by the debtor, judgment should be given [for the claim], for both parties' statements agree as to the amount. Since, then, there was a previous action on the claim, and in this action both parties' statements as to the amount are agreed, judgment should rightly be rendered, notwithstanding the destruction of the instrument by fire.

Rubric. This was an action before the Chamber, for the remainder due on a money-advance, against Gombei, headman of Yoyama village, Adachi *kori*, Bushu,[2] in the income-fief of the Chamberlain[3] Shimada Hachirozayemon, by Yashiro, renter of the shop of Heihachi, in Okugawa ward, Fukagawa [district]. At the trial, Tanaka Toyemon, a retainer of Hachirozayemon, appeared, and declared, on being asked his reason, that payment would be in vain, since the instrument was destroyed.[4] The case was therefore reported to the Chamber of Decisions, and payment was ordered."

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1. *Urikake-kashi-kin.* This phrase goes to indicate that the term "money-loan" may have been used consciously in a large sense as including all the classes of claims usually treated in analogy to ordinary money-loans. 2. Musashi *kuni.* 3. *O-ko-nando;* this title comes from *nando*, a room for storage, with the diminutive *ko* and the honorific *o*, denoting the Palace. Shimada was the name of a merchant prince, almost as famous as the Mitsui family; he became bankrupt, however, early in Meiji. This office was doubtless bestowed on him by the Shogunate for services rendered in lending money. 4. That is, apparently, the debtor would not be able to have the instrument restored to him as evidence of payment.

APPENDIX.

In the editing of the Legal Precedents it was found impossible, for several reasons, to undertake any general re-arrangement of the order of the precedents, and in only one or two instances was the original order of the compilation disturbed. In a few topics, however, there is a special need for a chronological arrangement of the whole material of the volume. Within each Section of the volume, as has been explained in the Notes, the precedents are grouped in three classes,—1st, enactments, resolutions, etc., in order of time; 2nd, actions at law, in order of time; 3rd, all precedents (chiefly memoranda) bearing no date; and if the classification of the Sections had been unimpeachable, there would be no need for a chronological re-arrangement, except for the precedents of the 3rd class to which probable dates could be assigned. But the Sections, as will be seen, are classified under heads not completely satisfactory, and within the Sections (especially the long Section I) the precedents are not always properly entered. The topic that suffers most by these errors is that of Prescription as dealt with in the Private-Settlement Orders. The course of legislation on this subject cannot be understood without studying chronologically the four Orders of 1716, 1746, 1797, and 1844. The first is referred to in No. 1 of the Precedents; the second is found in No. 5; the third in Nos. 111 and 13; and the fourth in Nos. 118 and 119.

With a view to facilitating the study of this topic and of any others for which numerous precedents exist, the prece-

dents have been arranged in chronological order, so far as possible. Where no date can be inferred, the precedent is placed in a supplementary list. Where the exact year cannot be inferred, the precedent is placed in the index at the earliest of the possible dates.

A complete re-analyis of the precedents, with a second index by headnotes, would have been desirable,—for detailed study, indispensable. But as the remaining portions of Part III contain matter similar to that of this volume, and as a general topical index must be made for the entire work (if not also a special one for Part III), an index to this volume could have a temporary value only, and none has been made.

CHRONOLOGICAL LIST OF PRECEDENTS.

No. 3.—Resolution of Town Magistrates.
Disposition of an Action by one who has suffered Local Exile and seeks to enforce a Claim for Money Lent to a Resident of his former Domicile,
Kyoho, II, 1717 7

No. 75.—Action at Law.
Lease of a Trade-Mark and a Livery,
Kyoho, V, 1720 290

No. 77.—Proclamation, with Inquiries.
Interest on Money Loans,
Kyoho, XIV, 1729 296

No. 1.—Resolution of Chamber, etc.
Judgments in Actions on Money Loans,
Kyoho, XIV, 1730 1

No. 2.—
Money Loans with Blank Deed or with Doubled Principal,
Kyoho, XIV, 1730 6

No. 78.—Resolution of the Chamber.
Interest on Money Loans,
Gembun, I, 1736 298

No. 79.—Resolution of the Chamber.
Correction of the Rate of Interest in Land-Pledge Instruments bearing no Seal, etc., etc.
Gembun, I, 1736 299

No. 80.—Memorial to the Council.
Money Actions,
(*Probably 1747*)..... 113

No. 81.—Memorial to the Council.
Money Actions,
(*Probably 1741*)..... 114

No. 4.—Proclamation of the Chamber.
Money Loans,
Yenkyo, III, 1746 7

No. 5.—Resolution of the Chamber.
Disposition of Actions upon Money Loans,
Yenkyo, III, 1746 8

No. 88.—Memorandum by the Chamber.
Payment by Yearly Instalments,
Horeki, IX, 1759 314

No. 98.—Inquiry by a Retainer.
Action for Arrears of Judgment-Instalments,
Meiwa, IX, 1772 345

No. 99.—Decision of the Chamber.
Where Instalment-Judgments have been rendered against Residents of distant Provinces, Parties' Relatives in Yedo may not appear as Representatives,
Anyei, III, 1774 346

No. 89.—Resolution of the Chamber.
Proofs in Contracts for Yearly and Monthly Instalments,
Anyei, IV, 1776 315

No. 6.—Correspondence between Town Magistrates.
Issuing of an Order for evicting a Tenant pending Trial of a Money Action against him,
Anyei, VII, 1778 10

No. 81.—Resolution of the Chamber.
Unsigned Postscripts, Notes, etc., as well as Instruments not reciting the Principal and Interest, to be invalid.
Anyei, VIII, 1779 300

No. 56.—Action at Law.
Loans from a Prayer Fund,
Anyei, IX, 1780 217

No. 48.—Instructions by the Council.
Disposition of Money Loan Actions in Osaka Jurisdiction,
Temmei, I, 1781 176

No. 76.—Action at Law.
Transportation of Freight,
Temmei, I, 1782 292

No. 109.—Action at Law.
Instalment-Judgment for Arrears of a Money Loan,
Temmei, II, 1787 371

No. 100.—Inquiry by a Retainer.
Instalment-Judgments in Private Fiefs,
Temmei, VIII, 1789 347

No. 7.—Resolution of the Chamber.
Judgment requiring that a Feudal Lord or Esquire shall pay a Money Loan contracted by Farmers with the District-seals,
Kwansei, II, 1790 11

No. 82.—Correspondence between Magistrates.
Reduction of the Rate of Interest from 1 *bu* per 10 *ryo* to 1 *bu* per 20 *ryo*,
Kwansei, II, 1790 300

No. 93.—Action at Law.
Yearly Instalments,
Kwansei, II, 1790 321

No. 86.—
Compound Interest on Money Loans,
(*After Kwansei, II, 1790*)..... 308

No. 10.—Decision of the Chamber.
Ordering Payment where the Instrument specifies on its Face no Term,
Kwansei III, 1791..... 16

No. 11.—Correspondence between Magistrates.
Disposition of an Instrument of Loan given by a Banished or Absconding Debtor,
Kwansei III, 1791..... 17

No. 101.—Decision of the Chamber.
Non-Payment of Instalments on a Debt of 200,000 *rgo*,
Kwansei IV, 1792 348

No. 9.—Decision of the Chamber.
Order for the Payment of a Loan made by a deceased Zato of the Blind, the Petition being filed by his Successor,
Kwansei, V, 1793 14

No. 12.—Instructions of the Council.
Disposition of Actions brought after the Limit of Time for Entertaining Suits,
Kwansei, IX, 1797..... 18

No. 111.—Instructions by the Council.
Private Settlement of Money Loans,
Kwansei, IX, 1797 371

No. 112.—Proclamation.
Taking up of Actions on Money Loans, etc.
Kwansei, IX, 1797 379

No. 13.—Resolution of the Chamber.
Disposition of Actions on Money Loans,
Kwansei, IX, 1797 21

No. 113.—Inquiry by a Retainer.
Claims on Patent-Fund and Temple-Fund Loans arising before the Private-Settlement Order,
Kwansei, X, 1798 379

No. 55.—Correspondence between Magistrates.
Payment of Debts incurred in a previous Generation,
Kwansei, X, 1798 213

No. 8.—Correspondence between Magistrates.
Debts of a Temple-Incumbent who has suffered Punishment,
(*Between 1798 and 1813*) 13

No. 57.—Action at Law.
Apportionment of Money Advanced,
Kwansei, XI, 1799 219

No. 114.—Inquiry by a Retainer.
Actions on Money Loans made before the Private-Settlement Order, where the Debtor acts Unconscionably,
Kwansei, XII, 1800 380

No. 115.—Inquiry to the Chamber by a Magistrate.
Whether a Claim for Money Loaned before the Private-Settlement Order, paid back after it, and borrowed again, is to be treated like a Claim on a re-written Instrument of Loan,
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No. 14.—Decision of the Chamber.
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Kyowa, II, 1802 25

No. 70.—Memorial by Magistrates.
Concerning the business of Leasing Chattels for Hire.
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No. 71.—Proclamation by the Chamber.
Leasing of Chattels for Hire.
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No. 102.—Proposal of Law by the Chamber.
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No. 52.—Memorandum.
Disposition of Money-Loan Actions in Osaka,
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No. 53.—Memorandum.
Disposition of Money-Loan Actions in Osaka,
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No. 15.—Correspondence between Magistrates.
Disposition of the Complaint in a Money Loan Action against a Number of Retainers,
Bunkwa, X, 1813 26

No. 94.—Action at Law.
Yearly Instalments,
Bunkwa, XI, 1814 326

No. 110.—Action at Law.
Money Loan,
Bunkwa, XII, 1815 373

No. 58.—Action at Law.
Building Advances,
Bunsei, I, 1818 229

No. 50.—Memorandum by a Magistrate.
Petition for the Indorsing-Seal of the Chamber in a Money-Loan Action, by one who has removed from Settsu, Kawachi, Idzumi, or Harima *kuni*, to any other *kuni*, against a resident of one of those *kuni*,
Bunsei, I, 1818 189

No. 45.—Correspondence between Magistrates.
Loans from the Reserve-Fund set aside for the use of the Time-keeping Attendants in the West Palace,
Bunsei, II, 1819 166

No. 90.—Regulation of a Magistrate.
Instruments providing that Instalments due at a future date shall fall due immediately on Default in a single Instalment,
Bunsei, III, 1820 316

No. 126.—Correspondence between Magistrates.
Dishonest Refusal to pay a Loan contracted before the Private-Settlement Order,
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Actions for Money Loans, Unpaid Purchase-Money, etc.,
Bunsei, IV, 1822 42

No. 49.—Correspondence between Magistrates.
Money Loan Actions against Players,
Bunsei, VI, 1823 179

No. 103.—Correspondence between Magistrates.
Non-payment of the first Instalment Due,
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No. 21.—Decision of Clerks.
Actions upon Money Loans against Condemned Persons,
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No. 16.—Correspondence between Magistrates.
Proceedings in an Action on a Money Loan against Retainers of the Hongwan Temple,
Bunsei, X, 1827 28

No. 116.—Inquiry to the Chamber by a Magistrate.
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No. 87.—Report by a Guild-Manager.
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No. 17.—Correspondence between Magistrates.
Payment by a Debtor who has suffered Local Exile,
Bunsei, X, 1821 32

No. 51.—Instructions by the Council.
Disposition of Money Loan Actions in Osaka,
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No. 18.—Decision of the Chamber.
Suits by a Creditor against the Successor of an Absconding Debtor,
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No. 19.—Reply to an Inquiry by a Retainer.
Action against the Surety for a Loan, the principal Debtor being a Retainer who has been exiled by his Lord and whose House is extinguished,
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No. 128.—Decision of the Chamber.
Payment of a Loan refused because of Loss of the Instrument by Fire,
Bunsei, XIII, 1830 425

No. 42.—Correspondence between Magistrates.
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No. 22.—Correspondence between Magistrates.
Disposition of Actions for Money Loans or Purchase-Money where after Indorsement the Plaintiff or the Defendant Absconds,
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No. 59.—Action at Law.
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Taking Cognizance of an Action for Unpaid Purchase-Money or a Money Loan brought by one sentenced to Local Exile,
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Payment by a Son of Debts of his Exiled Father,
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No. 96.—Inquiry by a Retainer.
A Loan incurred jointly by the Retainers of a Noble Family; House-Extinction ordered; the Sons and younger Brothers newly taken into Service; disposition of Actions by Creditors,
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No. 26.—Reply to the Inquiry of a Retainer.
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No. 83.—Proclamation by the Council.
Amendment of the Rule in regard to Interest on Money Loans,
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No. 29.—Resolution of the Chamber.
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Tempo, XIV, 1843 111

No. 32.—Letter of a Magistrate.
In Actions by Royal Temples for Money Loans the Creditor should not be entitled in the Complaint, as indorsed by the Bureau, a 'Money Lending Office,'
Tempo, XIV, 1843 117

No. 105.—Correspondence between Magistrates.
Delay in Payment of Instalments,
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No. 106.—Resolution of the Chamber.
Revision of the Instalment-Schedule,
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No. 119.—Resolution of the Chamber.
Proceedings under the Order for Private-Settlement of Money Loans, Wages of Labor, etc.,
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No. 72.—Correspondence between Magistrates.
Private Settlement of Actions for Restoration of Chattels Leased and for Payment of Fees,
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No. 122.—Inquiry by a Retainer.
Actions on Money Claims arising before the Private-Settlement Order, the Parties being residents of Provincial Fiefs,
Kokwa, II, 1845 398

No. 33.—Opinions of Magistrates.
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Arrears of a Loan made by the Family-Temple of the Lord of Owari previous to the Private-Settlement Order,
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No. 84.—Inquiry by Retainers.
Interest on Money Loans,
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No. 34.—Correspondence between Clerks.
Disposition of an Action on a Money-Loan against one of the Military Gentry, the Defendant having Absconded Pending Trial,
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No. 85.—Correspondence between Magistrates.
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No. 74.—Inquiry by a Clerk.
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MATERIALS FOR THE STUDY

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PART I.—INTRODUCTION.

PART II.—CONTRACT: CIVIL CUSTOMS.

PART III.—CONTRACT: LEGAL PRECEDENTS.

SECTION I: MONEY LOANS. LETTING AND HIRING.

SECTION II: SALE.
(In preparation.)

SECTION III: DEPOSIT. PLEDGE.
(In preparation.)

PART IV.—CONTRACT: COMMERCIAL CUSTOMS.
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PART V.—PROPERTY: CIVIL CUSTOMS.

PART VI.—PROPERTY: LEGAL PRECEDENTS.
(In preparation.)

PART VII.—PERSONS: CIVIL CUSTOMS.
(In preparation.)

PART VIII.—PERSONS: LEGAL PRECEDENTS.
(In preparation.)

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PART V.

PROPERTY: CIVIL CUSTOMS.

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CHAPTER I.

OWNERSHIP AND TITLE.

There is usually, in the case of ricefield, upland, and forest land, a register, called "land-inspection-book"[1] or "official-map-book,"[2] and kept at the village office; in this is entered the total assessed production of the various kinds of land in the village. There is also a "name-list-book"[3] or "production-book,"[4] in which are entered the assessed production, area, common name,[5] and owner's name of each piece of land, the title being thus certified. In towns there is a register for the land (which is tax-free),[6] called "map-book"[7] or "area-book,"[8] in which are entered the number of feet of frontage[9] and depth[10] of each house and the name of its owner, the title being thus certified.[11] Variations of custom more or less great are as follows:

KINAI. In Yamashiro *kuni*, Kuse *kori*, there is a register[2] in which are entered the production, area, common name, and owner's name of each piece of land, the title being thus certified. When the title passes to another person, the name is changed and the date entered, so as to give the

1. *Kenchi-cho.* 2. *Mi* (an honorific prefix, here employed because of the official character of the book)-*zu* (map, chart)-*cho* (book). 3. *Na* (name)-*yose* (collect)-*cho.* 4. *Taka-cho.* 5. *Azana.* 6. *Menzen.* This must mean merely "exempt from the rice-tax," because town property was subject to the town taxes. 7. *Yezu-cho.* 8. *Ken* (a measure of length)-*su-cho.* Throughout the remainder of the chapter the word "register" alone is used in the text, the vernacular term being given in the notes. 9. *Maguchi.* 10. *Okuiki.* 11. *Sadameru.*

In Mino *kuni*, Atsumi, Kagami, and Katagata *kori*, there is a register[1] in every village, in which the production, area, common name, and owner's name of each piece is recorded, the title being thus certified. A family that inherits an ancient register of land-inspection is highly esteemed; but few ever show the genuine one, if they have it, for fear that if they become bankrupt and their effects are sold, it may pass out of the family.[2] In town wards there is a house register[3] kept by the ward officials, in which are recorded the frontage and depth of each house and its owner's name, the title being thus certified. In Ahachi *kori*, there is a register of the ordinary kind, and in some villages a copy of the record relating to each owner is given to him.

In Shinano *kuni*, Saku *kori*, in order to have ownership in real property, such as cultivated or forest land, one's title must be entered in the land-register.[4] But the ownership of personalty, such as animals and household utensils, is complete without such entry, and the possessor may keep such property against all others, until better evidence is offered. In Hanu *kori*, the owner of cultivated land, forest land, ponds, or marshes, as well as the owner of rice or money, may obtain a profit by letting others have the use of such money or rice or the natural products of such land.

In Iwaki *kuni*, Shirakawa *kori*, there is a register[5] kept by the headman,[6] in which the production and area of each plot, with its owner's name, are recorded. These are called "original lands,"[7] and on them are imposed the expenses

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1. *Taka-cho.* 2. The official who had charge of the book apparently took possession of it when a new one was made out, and handed it down in the family. The editor possesses a number of documents obtained from the family of a former headman. 3. *Iye-nami-cho.* 4. *Jikata bosatsu.* This sentence is badly constructed and the above rendering merely the most probable. 5. *Mizu-cho* or *taka-yosei-cho.* 6. *Shoya.* 7. *Hon-den.*

of furnishing horses and men for official travellers at post-towns; and on the newer lands no such service is imposed.

In Iwashiro *kuni*, Shinobu *kori*, there is a register kept by the village-officers for cultivated and forest land, in which a record of the usual sort is made. Every owner has a copy of the entries relating to himself in the shape of a small ticket, which they call "hanging-ticket"[1] or "share-ticket,"[2] the title being thus certified.

In Rikuzen *kuni*, Toda *kori*, the ownership of hereditary cultivated lands and of buildings is not certified by any ticket, but is recorded in a land-register[3] kept in the office of the headman.[4] But title to all other real property is evidenced by a certificate of some kind. The owner of realty can do as he pleases with it, except that he may not sell it in perpetuity. His ownership is inviolable, unless it is confiscated[5] for crime or taken[6] for public purposes. The latter occurs when the feudal lord needs the land for a special purpose or when a reservoir or storage-dam for public use has to be constructed on the land. An order is issued for the taking, and other land is given by way of recompense; but if there is no other land that can be so given, the owner of the plot taken must suffer the loss and cannot even claim the price. By an enactment of Kwansei, 9th year (1796), no one can own land of more than 5 *kwammon* in value, nor set apart land for a son establishing a new family, unless the family estate is over 3 *kwammon* in value; but the law does not apply to land acquired before that date or to town-lands.[7] The ownership of horses and oxen is evidenced by a tag[8] (one for each head), given to the owner by the feudal official, through the headman, and renewed every year. Any person having cattle without such a tag is punished by house-imprisonment. All other personalty may be owned and disposed of without any certificate.

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1. *Sage-fuda*. 2. *Hai-fu*. 3. *Taka-cho*. 4. *Kimoiri*. 5. *Kessho*. 6. *Tō-moku*. 7. See Appendix. 8. *Kai* (inspect)-*han* (seal)-*shi* (paper).

In Uzen *kuni*, Okitama *kori*, lands and buildings in towns are recorded in the land register.[1] The person so entered as owner has a perfect title, and may sell, pledge, or otherwise dispose of the property. His ownership is inviolable, except in case of confiscation for crime by order of the feudal lord. The owner of upland may turn it into rice-field, and *vice versa*. Balks between rice-fields are regarded as part of the fields, but not the grass growing on them, and any one may cut and take the grass. A hill-side adjoining rice-field or upland belongs to the owner of the latter; that is, if at the foot of a hill there is a rice-field 10 *chō* in area, owned one half by one man and one half by another, each is owner of half the hill-side. But one may dispose of his share to the other, who will then own the whole and may dispose of the grass, trees, etc., as he pleases. Personalty may be transferred without the use of documents or records of any sort, and possession[2] proves ownership unless better evidence is produced; except that the ownership of horses and oxen is evidenced by a wooden ticket.[3] When saltpeter is discovered in a lot of residence-land, the feudal lord has the exclusive right of mining it. But compensation will be paid to the owner for any injury inflicted thereby, such as the loss incurred through destroying the surface, or, if a house is thereon, the expense of rebuilding it.

In Ugo *kuni*, Akita *kori*, when waste land is reclaimed and cultivated, a portion of the area is set aside and exempted from all taxes for an indefinite time. The portion is known as "new-cultivation exemption."[4] When it is desired to sell it, both buyer and seller must apply for permission to the feudal official. But the absolute ownership does not pass to the buyer. As soon as the contract of sale is made, the portion becomes chargeable with the

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1. *Mizu-cho.* 2. *Te ni aru* (to be in the hand). 3. *Kan-satsu.* 4. *Shin* (new)-*ro* (labor)-*men* (exemption).

taxes and other charges, the amount of these being entered in the land-register,[1] and the certificate noting the area of the land and the name of the village being delivered to the buyer. The new occupant thereafter pays to the nominal owner the amount of the taxes, [the latter paying to the proper official], while the occupant acquires a perpetual right to the profits of the land. This is called an "income-possession."[2]

HOKKAIDO. In Oshima *kuni*, Kamedo *kori*, [in villages] if one pays to the feudal lord a rent of 5 *yen* for every 100 *tsubo* of upland, he becomes its owner, and receives a title-deed.[3] The same rule applies to town-land also. There are no terms such as "production" or "area." In Tsugaru *kori*, there is a so-called "land-instrument"[4] for residence land, countersealed and indorsed by the officials, and serving as proof of title; no register is used. Few persons own forest-land, the feudal lord owning almost all, and there is no report of sales to the officials.

HOKUROKUDO. In Echizen *kuni*, Asuha *kori*, a register[1] is kept at the village office, in which the usual entries are made. The officials also copy the entries relating to separate owners upon slips of paper called "hand-tickets,"[5] and, affixing their seal, they distribute to the owners these proofs of title. In Kubiki *kori*, all utensils and other personalty, except guns, may be used or sold as the owner pleases, nor is any document necessary.

In Kaga *kuni*, Ishikawa *kori*, by law of the fief, land cannot be subdivided by will among one's children unless it is of more than 50 *koku* assessment. Hence has arisen a custom of distributing one's land among one's children under the name of a sale. An old law prohibits the grant or

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1. *Taka-cho.* 2. *Chigyo* (a term applied to the right of the higher *samurai* to the profits of a definite district or plot)-*daka.* 3. *Ko-ken.* 4. *Jimen-shomon.* 5. *Tefuda.*

sale of [village] land to temples,[1] *samurai*, and merchants. In Kawakita *kori*, farmers only may own cultivated land; otherwise the acquisition of all kinds of property is permissible. In Nomi *kori*, it is an old rule that rice-field and upland (called the "chief-possessions")[2] may not be owned by common persons, and may not be sold, leased, mortgaged or otherwise disposed of by the occupant. So that when a person wishes to transfer land occupied by him, he petitions the feudal official, declaring that he cannot pay his taxes, and praying permission to transfer the land to another, and pay taxes with the money received as compensation for the transfer (the word "price" not being used). This transaction is called "change of possessions."[3]

In Noto *kuni*, Suzu *kori*, the supply of rice is a limited one in proportion to the population, and exportation, as well as manufacture into wine, is forbidden. In the districts of the salt industry the people are obliged to obtain a vast amount of rice (called "Government-advance"[4]) from the feudal lord, and a fixed number of bags of salt are given in exchange for 1 *koku* of rice. The law requires, therefore, that all salt produced in this *kori* shall be directly deposited

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1. This seems inconsistent with what is said as to gifts to temples, in Chap. II, "Temple-Endowments." But the reference may be merely to the law prohibiting the erection of new temples (XII Kyoho, 1727, Rudorff, *Tokugawa Gesetzsammlung*, 54), which however hardly reached to this daimiate; or we may supply (as is necessary not infrequently) the words "without official sanction." 2. *On-taka*. But the "on" may be the honorific used of the things belonging to a superior. Hence, one construction of the passage may be (especially considering the reference to the "common people") that the land was nominally owned by *samurai*, and being received by them directly from the lord, it could not be alienated without his permission. The analogy of one of the Tosa tenures, as described by Mr. Grinnan in his paper on "Feudal Land Tenure in Tosa" (Trans. Asiat. Soc. Jap., 1892), leans to this view. 3. *Kiri* (cut, erase,—hence, substitute one entry for another)-*taka*. 4. *O-shiire-mai*.

in the storehouse of the clan, and may then be bought by any who wishes it. No salt may be privately sold, nor can it even be used until it has been thus deposited.

In Echu *kuni*, Tonami *kori*, where a man has undertaken with the consent of the superintendent of new-cultivation,[1] to improve the upland of another and cultivate it for a number of years, and before the expiration of the time turns it into ricefield at his own expense, he becomes the owner of the land by paying the original owner the value of the upland.

In Echigo *kuni*, Koshi *kori*, when in consequence of an overflow of the Shinano River there occurs an increase and diminution of land by a detachment[2] of land in one place and an accretion[3] in another, the owners of the detached land must bear the loss, and the benefit of the accretion goes to the owner of the land increased. In Kambara *kori*, the ownership of town lands is evidenced by a land register[3] kept in the ward assembly-house. Sales are noted therein, with the date and the names of buyer and seller. An inspection of the register is made in the first month of every year by the ward representative and the elder. In addition to this record, each owner has a title-deed for his possessions. Almost all the upland, rice-field and forest land has been acquired by the appropriation and improvement of the public waste-land, a price being paid to the feudal lord and the receipt being used as a title-deed. Houses, as well as cattle, money, etc., are not entered in the land-register and can be freely sold or lent. In Kubiki *kori*, the ownership of lands in towns (including buildings) is evidenced by a document sealed by the company and headman, countersealed by the elder, and attested by the governor. A copy is entered in the land-register, here called "house register."[4] Buildings and lands in towns can be sold only to residents of the same town. In Uwonuma *kori*, the ownership of cultivated and forest land is evidenced by the

1. *Kaisaku-bugyo.* 2. *Kake-chi.* 3. *Yose-chi.* 4. *Iye-cho.*

land register.[1] Mortgages of land are permitted for a term not exceeding 10 years, even though the mortgagee is in another fief; but sales are absolutely forbidden.

In Sado *kuni*, Sawata *kori*, there is a register[2] of the period Genroku (1688-1704). This is carefully preserved at the village office and is called the "official map-book."[3] When the villagers assemble at New Year to exchange the season's good wishes, the book is placed upon an elevated floor, and with offerings of consecrated wine they pay reverence to it. There is a copy of it called "bag-book,"[4] in which are entered the production, area, and owner's name of all the lands in the village, the title being thus certified. In town-wards there is a register[1] in the possession of the ward-elder, and in it are recorded the frontage and depth of every house in the ward, with the owner's name, the title being thus certified.

SANINDO. In Tajima *kuni*, Izushi *kori*, there is a register[5] kept by the headman[6] of every village, in which are entered the production, area, common name, and owner's name of every piece of rice-field, upland, and forest-land. A copy of the relevant entry is given, on request, to every owner. In town-wards, there is a house-register[7] kept by the headman,[8] in which the frontage and depth, with the names of owners, are entered, the title being thus certified. In Idzumo *kuni*, Shimane *kori*, the ownership of residence-land is evidenced by a "sale title-deed."[9] Of personal property there is no record or document. All can be sold, mortgaged, or otherwise disposed of at pleasure. The ownership of cultivated and forest land is evidenced by a "person-name-list book."[10] This also may be sold, mortgaged, or otherwise disposed of at pleasure, provided taxes are not in arrears. No one can under any circumstances be

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1. *Mizu-cho.* 2. *Ken-chi-cho.* 3. *O-zu-cho.* 4. *Fukuro-cho.* 5. *Taka-cho.* 6. *Shoya.* 7. *Ken* (length)-*betsu* (difference)-*cho.* 8. *Nanushi.* 9. *Bai-ken-jo.* 10. *Nimbetsu-nayosei-cho.*

deprived of his property against his will. The owner of cultivated, forest, or residence land, or of ponds or marshes, is entitled to retain all the profits issuing therefrom, whether arising in the course of nature or produced by human industry.

In Iwami *kuni*, Naka *kori*, when the owner of cultivated or residence land cannot pay his taxes, it is the custom for the headman[1] to pay them instead, and if frequent defaults of this sort occur, the land is confiscated by the headman and becomes the common land of the village (being called "common cultivation-land," [2]) and the owner loses all title to it.

SANYODO. In Harima *kuni*, Shikito *kori*, a register[3] of the usual kind is kept by the headman.[1] This is copied once in every five years and one of the copies placed in the temple of the local divinity.[4] In town wards there is a register[5] of the usual sort. There is also a title-deed[6] for every house, and on the occasion of a transfer this is given to the feudal official with the petition, and a fresh one is returned to the buyer, a fee[7] of one-twentieth of the purchase money being paid at the same time. Where the transfer is one for which no charge is made (as for instance, when the partition of a family patrimony occurs), a small transfer-fee[8] only is paid.

In Mimasaka *kuni*, Shonan *kori*, the terms "right-ladle"[9] and "left-ladle"[9] are used of riparian proprietorship. The river is usually in the control of the village on the right bank, which pays the taxes; so that the village on the left bank cannot do as it pleases, even in regard to fishing.

In Bigo *kuni*, Mitsuki *kori*, a register[3] of the usual sort is kept by the headman[1] of the village. In towns, the

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1. *Shoya*. 2. *So* (all)-*sakuchi*. 3. *Nayose-cho*. 4. *Ujigami*. See Satow, Transact. Asiat. Soc. Jap., Vol. III., App. 5. *Mizu-cho*. 6. *Kokenjo*. 7. *Tesuryo*. 8. *Cho-kiri-ryo*. 9. *Migi-shaku*, *hidari-shaku*. The significance is obscure.

ward-elder keeps a house-register[1] in which areas and names of owners are recorded, the title being thus certified. Every house owner also has a title-deed,[2] officially sealed by the elder and serving as proof of title.

In Aki *kuni*, Numata and Aki *kori*, a register[3] of area, size, and owner's name is kept by the headman. A copy of the relevant entry, sealed by the local officials, is delivered to each owner; this is called "*tsubo*-fixer" and serves as proof of title.

In Suwo *kuni*, Yoshihiki *kori*, the ownership of residence-land is evidenced by a title-deed, having on its face the seals of the elder, chief elder, and ward officers, and on its back the attestation of the district-deputy;[4] while that of cultivated or forest land is evidenced by a certificate, bearing a transcript of the entry in the land-register.[5] On this certificate[6] are entered the person's possessions as a whole, the total assessed production being named and separate parcels not being distinguished. The owner, therefore, who wishes to transfer a separate parcel is obliged to have the certificate made out anew; but this cannot be done except at the time of the revision of the register, which ought by law to occur in the 3d month of every year, but in fact, owing to the inconvenience, does not occur oftener than once in 3 years. For buildings alone there is no certificate of ownership. Personalty may be disposed of at pleasure without any restraint whatever; but not realty. In Tsuno *kori*, the ownership of cultivated, forest, and residence land, is evidenced by a certificate,[7] containing a transcript of the

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1. *Iye-cho*. 2. *Uriki-jo*. 3. *Mizu-cho*. 4. *Daikwan*. 5. *Tahata-nayose-cho*. 6. *Sage* (hang, let down)-*fuda* (ticket). The *sage* may imply that the ticket was pasted on the register, one end hanging loose—a not uncommon practice in Japan. But probably the sense of "something sent down by a superior" is here the proper one. The *sagefuda* was made out and given to the land-owner by the officials. 7. *Sagefuda*.

land-register (known as "horizontal-book"[1] or "assembly-book"[2]) and inspected officially every 3 years. In Kaga *kori*, the owner of cultivated, forest, or residence land or of ponds or marshes is entitled to retain all the profits issuing therefrom, whether arising in the course of nature or produced by human industry.

In Nagato *kuni*, Toyoda *kori*, when a person is unable to pay his taxes, his company, perhaps all the fellow-villagers, form a lottery-club,[3] and pay the taxes with the money thus collected. The owner, in return for this, agrees to hold his land for the benefit of the club, and, while continuing to cultivate the land, pays off the debt gradually by buying up the lottery-tickets, until finally the debt is redeemed and he becomes full owner once more.

In Tosa *kuni*, Kochi *kori*, "new-land"[4] only may be sold, not "original-land."[5] The latter term is applied to all lands cultivated and recorded in the register during the rule of the Chosokabe family; the former term is used of lands brought under cultivation during the rule of the Yamauchi family.

In Awa *kuni*, Nabigashi *kori*, the owner of property may deal with it as he pleases, except that for transfer of assessed cultivated land, forest land, lakes or swamps, previous notice to the headman and the securing of his official seal are necessary. In Miyoshi *kori*, there is an old rule that he who is in arrear with taxes or other dues may not, until the arrears are paid, deliver any portion of his rice to another, even on the pretext that he owes to the latter a quantity of rice.

In Sanuki *kuni*, Kagawa *kori*, in villages, a register[6] is kept in which the production and area of each plot, with the

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1. *Yoko-cho.* The idea may be that the book was longer horizontally than perpendicularly, as in fact some of the land-registers are. 2. *Za* (seat, assembly)-*cho.* 3. *Mujin-ko.* 4. *Shinden.* 5. *Honden.* See Tosa *kuni*, in Part II, Chaps. III and IV. 6. *Jundo-cho.*

owner's name, are entered, and a document bearing the official seal of the headman[1] and company-chief serves to prove title. In towns a register[2] of the usual sort is kept. In Naka *kori*, a register of the usual sort is kept, in villages[3] as well as in towns.[4] In sales of town-lands a proper slip is posted over the name of the seller, and the attesting seal of the chief elder is affixed.

In Iyo *kuni*, Uma *kori*, a great register[5] of a similar sort is kept; and the relevant entries are copied on small certificates[6] and given to the various owners, each bearing the seal of the district magistrate[7] and deputy.[8] In town-wards a register[9] of a similar kind is kept. In transfers of property both parties file a petition countersealed by their companies, and the town-magistrate gives a document of permission.

SAIKAIDO. In Chikugo *kuni*, Mitsuma *kori*, some formal process sanctioned by custom is requisite to gain title to real property, while as to personalty delivery of possession only is sufficient.

In Buzen *kuni*, Kiku *kori*, a register[10] is kept in the village office, in which is recorded the production, area, and common name of all plots of cultivated and forest-land, as well as the owner's name; each owner keeps a "transfer-document," certifying to his title. In towns a transfer-book[11] is kept, in which all instruments of transfer are entered, the title being certified to by the counterseal of the ward elder and chief elder, and by the indorsing seal of the town magistrate. In Shimoge *kori*, a register[12] of a similar sort is kept for cultivated and forest land, each owner having also a "transfer-deed" to certify to his title. In towns a register[13] of the usual sort is kept.

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1. *Shoya*. 2. *Uri* (sale)-*ken* (deed)-*cho*. 3. *Nayose-cho*. 4. *Meisai* (details)-*nuke* (strike out)-*tsuke* (enter)-*cho*. 5. *O* (great)-*sagefuda* certificate). 6. *Ko-sagefuda*. 7. *Kori-bugyo*. 8. *Dai-kwan*. 9. *Sun* (inch)- *ken* (examination)-*cho*. 10. *Nayose-cho*. 11. *Yuzu-ri-watashi-cho*. 12. *Saku* (cultivation)-*nami* (in succession)-*cho*. 13. *Misu-cho*.

In Hyugo *kuni*, Miyazaki and Koyu *kori*, a register of rice-field and upland is kept in every village-office. Most of the land is "allotment-land,"[1] and every 3 or 5 years the land is re-divided[2] (except the newly reclaimed lands[3]), and more or less alteration takes place in each one's share;[4] so that although one may call himself the owner of land of so and so many tens of *koku*, the term "owner" is a vain one. In towns a register[5] is kept in the ordinary way, the title being thus certified.

In Osumi *kuni*, Sō *kori*, there is a strict rule that a farming family[6] cannot own town land, nor a merchant family[7] own village land. The rice-fields and uplands are all owned by the feudal lord and his retainers, and the common people cannot become owners; they may in fact be regarded as croppers, with the exception of those who reclaim new land; these acquire its ownership and a special record is kept of such in the register[8] of the village office. This register contains also the usual record of the production and area of all rice-field and upland; and there are several greater persons[9] who distribute the land among the lesser persons,[10] and these cultivate their respective portions.[11] All persons between the ages of 15 and 60 are numbered among these lesser persons, and the taxes and sundry services are paid by them. In the case of town lands, the title is certified to by a deed received from the feudal official.

In Iki *kuni*, Ishida *kori*, two registers are kept in each village for cultivated and forest land. In one, the "clear book,"[1] are entered the production and area, with the

1. *Kuji-chi*. 2. *Wari* (divide)-*kayeru* (come back). 3. *Shin-kai-chi*. 4. *Uke-mochi*. 5. *Dai-cho*. 6. *Nōka*. 7. *Sho-kō*. 8. *Moto* (original, chief)-*cho*. 9. *Na* (name)-*gashira* (leader, head), i. e. their names lead all others. 10. *Na-ko* (children), i. e. lesser names. Another explanation is that *na* signifies the name given to a piece of land, and hence the land itself. Thus the *nagashira* are the chiefs over the land. See Simmons, "Notes, etc.," p. 101. 11. *Bunko*. 12. *Kyo-cho*.

owner's name, of all newly-opened land,[1] as soon as it is surveyed. But as all land except forest-land and made-land[2] is the common property of the whole village, even a person who has newly-opened land has no permanent ownership, and his land is included in the process of equal distribution among all the villagers. There are two ways of distribution, distribution by official orders[3] and distribution by mutual consultation.[4] In the former case the feudal official orders the distribution-superintendent[5] to make the division. The latter occurs when many families have divided, branch families have been set up, and their land has in consequence diminished and their livelihood become difficult. These then have a consultation of the whole village or district,[6] and a general allotment of shares[7] is made. Waste-land newly brought into cultivation is surrendered by its owner to the village or district, but if the reclamation has been made but a short time before, so that the profits as yet accruing are small, the owner is allowed, after an inspection of the land, to keep it until the next general distribution. This is called "temporary ownership until the next distribution."[8] In the second register[9] are entered the production and area of the lands as received at the time of a general distribution; this is for the purpose of tax-collection.

In Tsushima *kuni*, Shimoagata *kori*, there is one register[10] in which the production and area of all rice field and upland are entered; and a second register, called "present-cultivation-book,"[11] in which are entered the names of the cultivators.[12] There are two kind of lands, public and private. That which is newly opened and cultivated by a man's own efforts is called "private land,"[13] and he is in

1. *Kaikon-chi.* 2. *Kaimen* (sea)-*ume* (bury)-*tsuke* (build)-*shinden* (new land). 3. *Go-ho-wari.* 4. *Sodan-wari.* 5. *Wari-bugyo.* 6. *Fure*,—the extent of this district is obscure. 7. *Kobun haiyo.* 8. *Matawari-ichidai.* 9. *Taka-yose-cho.* 10. *Tsubo-tsuke* (fix)-*cho.* 11. *Ima-saku-cho.* 12. *Tsukuri-nushi.* 13. *Shi-den.*

reality the owner. But the land which has been cultivated since early times is called "public land,"[1] and its cultivators (called "present-cultivators") can only take the profits[2] of the land and have no ownership. In towns there is a register[3] in which frontage, depth, and owner's name are entered, and the title is thus certified. A tax, called "rafter and room money,"[4] is imposed on town-lands.

1. *Ko-den.* 2. *Saku-toku-mai.* 3. *Ki-cho.* 4. *Keta-ma-sen.*

CHAPTER II.

LESSER RIGHTS CONNECTED WITH LAND.

1.—BOUNDARIES.[1]

KINAI. In Yamato *kuni*, Soyegami *kori*, boundary-fences are erected and repaired by the owner on the sunny side.[2]

In Settsu *kuni*, Nishinari *kori*, the repair of a fence must be done at the joint expense of the owners on each side and under their joint supervision.

TOKAIDO. In Mikawa *kuni*, Atsumi *kori*, there is for every house in a town a drain for conveying away filthy waters, running along the boundary line of the premises. The saying is, "The west for drains, the east for fences: the north for fences, the south for drains." That is, the houses on the west or the south of a drain must see to its cleaning; while the houses on the east or the north of a fence must see to its repairs.

In Kai *kuni*, Koma *kori*, fence-repairs are to be made at the expense of the owners on each side, sharing equally; but if one is too poor, the other must bear the whole. In Yatsushiro *kori*, where a canal or a river serves as a

1. *Bunkai*. 2. *Hi-omote* (sun in front).

boundary, the middle line of the river or canal is the boundary line, and repairs are made at the joint expense of the owners on both sides.

In Musashi *kuni*, boundary fences and walls are recorded in a map kept at the ward-assembly office, and known as "certificate."[1] In the period Kwanyen (1748-1750) there was an examination of all boundaries and a revision of the maps; but fire afterwards destroyed them, and there is now much confusion and error in regard to the lines. It is the custom in villages to mark the boundaries of land by a line of stones or of charcoal set into the earth.

TOSANDO. In Shinano *kuni*, Takai *kori*, when the owner of land wishes to erect a fence, it must stand 2 or 3 feet from the boundary and must not exceed 4 or 5 feet in height.[2] The expenses of repairing fences between residence or garden land and the like are to be borne by the owners equally, but in the case of cultivated land, according to the assessed production of the plots on either side. In Hanu *kori*, the repairs of a boundary-fence running east and west, the owner on the south side must make the repairs.

In Rikuzen *kuni*, Miyagi *kori*, fences are usually built and repaired by the arrangement called "sending-fence"[3] or "sending-boundary;"[4] that is: A repairs one-half part, and B repairs the other half.[5] But sometimes the work is done at joint expense; often one owner supplies money, the other services. In Toda *kori*, the custom of "sending-fence" obtains, each owner repairing his own side. The fence stands about 1½ feet from the boundary, and may be 3

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1. *Koken*. 2. So as not to cut off the sunlight from the next land. But the rule should apparently apply only to the southerly owner. 3. *Okuri* (send)-*kaki*. The connection is obscure. 4. *Okuri-sakai*. 5. The passage in Ugo *kuni*, *infra*, shows the meaning of this unsatisfactory explanation.

or 5 or even 10 feet high, as the owner pleases; the material may be boards or bamboo or living shrubs. But in former times the farmers were not permitted to build a board fence. When a canal or river forms the boundary, an earth-mound is made along each bank for the whole distance, quite distinct from the private lands adjacent. The width of the mound for a 6-foot canal would be 3 feet on each side, and the owners on each side repair one half of the canal. Sometimes a moat serves as the boundary, encircling the residence-land on all sides; the land-owner owns the moat and therefore repairs it at his own expense. Formerly this was a common practice, but owing to a prohibition at one time issued, these moats are now seldom met with. Where a river separates two villages, the middle line is the boundary. Even when the course of the river is changed by a flood, this line remains the boundary. The area covered by the new channel is called "lost land," and the assessment of the owner is proportionately reduced; yet his name is still preserved as owner, even though the river covers his property.

In Uzen *kuni*, Okitama *kori*, the owners of residence-land must repair boundary fences at their joint expense. The fence must not exceed 6 or 7 feet in height. Where a river separates two villages, the banks form the boundary, not the middle line. When the course of the river is changed by a flood, so as to cut off a portion of the land of one village, this portion is owned in common. The same rule obtains where the alteration of course has been within the limits of one village and an individual proprietor finds his land cut off.

In Ugo *kuni*, Akita *kori*, when a river or canal serves as a boundary, the line runs through the middle of the stream, stakes being driven to mark the line. Each half of the river or canal is repaired by the owners on that side, though sometimes it is made a matter of joint expense. The "sending-boundary" is customary in re-

gard to fences; thus, A repairs the northern fence, [dividing his land from B's], B repairs his northern fence and so on. In Yuri *kori*, the boundary fence [in towns] is usually placed midway in the space of 1½ feet left between two houses, and is repaired at joint expense. Where two houses are built with a single partition wall and a continuous roof, the wall and roof are repaired at joint expense.

HOKUROKUDO. In Echizen *kuni*, Asuha *kori*, the boundaries of residence-land in towns are marked by stakes of chestnut trees driven into the ground 3 feet deep; and when the residence is sold, the stakes are taken up and fresh ones driven. Repairs of fences form a joint obligation, the parties on each side repairing one half.[1]

In Echigo *kuni*, Kambara *kori*, [in towns], a drain is made in the space of 1½ feet (known as "shed-space") required to be left between two houses. The drain serves as a boundary, a stake being driven in the middle. The space of 7½ inches[2] belongs to each house, and repairs are made jointly. In Uwonuma *kori*, where a river separates two villages, the middle line is the boundary. Nor, when a flood alters the course of the river does the boundary change; but the new channel is owned half by one village, half by the other.

In Echigo *kuni*, Koshi *kori*, the drains between adjacent lands are used as boundaries, the dividing line running through the middle of the drain. Each owner repairs his own fences.

In Echu *kuni*, Imizu *kori*, the owner (for example) of plot A repairs the fences between A and B, the owner of plot B the fence between B and C, and so on.[3] [Sometimes], if the fence (for example) is 2 feet thick, one owner repairs one foot of thickness, the other the other foot. If one owner refuses or is unable to do his share, he is considered to have

1. Probably the same arrangement termed *okuri-sakai*, in Ugo *kuni*, and Rikuzen *kuni*, *supra*. 2. A Japanese foot has only 10 inches. 3. This corresponds to the *okuri-sakai*, *supra*.

overlooks adjacent land. But the rain must not be shed upon adjacent land. In Nishinari *kori*, when a storehouse or projecting lattice[1] is built too near the public highway, the owner must consult and obtain permission from the ward-elder and the neighbors; and whenever repairs are to be made to it, the same procedure is necessary.

TOKAIDO. In Iga *kuni*, Abe *kori*, a house may be built close to the boundary-line; and if the rain is shed upon the adjacent land no objection can be made. But when one builds a house higher than the adjoining ones, it is the custom to cut out a part of the transverse beam supporting the ends of the eaves [of the new house]. That it overlooks the adjacent premises is no cause for objection.

In Ise *kuni*, Ano *kori*, all buildings must stand back 1½ feet from the line. No objection can be made if a house overlooks the neighboring premises, either from its second story or from a window. But in order to grow a high tree in cultivated land one must pay, in rice or money, a sum called "shade-payment"[2] as a compensation for the obstruction of sun-light. In towns the rain must not be shed upon adjacent ground; and a law of the fief prohibits the erection of a three-story house or of a storehouse.

In Omori *kuni*, Aichi *kori*, people dislike to have a neighboring house overlook their premises from a second story or a window, and a screen[3] must always be constructed. Rain may be shed upon adjacent premises. In villages tall trees are not to be placed where their shade may injure cultivated land, and if a tree grows above 18 feet[4] in height, the person injured may cut it down.

In Totomi *kuni*, Sano *kori*, in towns it has always been allowable to place houses close together, without providing any sun-space. But in villages it is customary to build far enough away from the boundary to shed the rain on one's own land.

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1. *Tsuri-koshi*. But the exact reference is not clear. 2. *Kage-shiki*. 3. *Mikakushi*. 4. Three *ken*.

In Kai *kuni*, Koma *kori*, a new house must stand 1 or 2 feet from the boundary, so as not to shed rain on the adjoining land. In Yatsushiro *kori*, in towns, the distance from the line is not less than half a foot or 1 foot, and it never exceeds 3 feet. In Yatsushiro *kori*, one cannot plant a tree on his own land [near the boundary] without the neighbor's consent.

In Idzu *kuni*, Takata *kori*, notwithstanding that one's land may be injured in consequence of its position [with reference to a building already existing], no objection can be made, since by old custom one must submit to this. But no new building can be erected which imposes any burden on adjacent land. It is customary to preserve a space of 3 or 4 feet width between the sides of houses, the test being that oxen and horses may pass through.

In Sagami *kuni*, Kamakura *kori*, there is a general prohibition against the planting of trees on the southern side of a neighbor's land, whether residence-land or cultivated land. Trees already planted are trimmed every year, so as to keep them from shutting off the sun-light. In Ashigara *kori*, the rule for the erection of a building is that it must be 6 feet distant from the adjacent premises; but when the land is too small for conveniently observing this rule, a mutual arrangement is sometimes made by which the builder of the new house is permitted to shed the rain upon the adjoining premises.

In Musashi *kuni*, Saitama *kori*, in building a house, a space of 1½ feet, and in building a storehouse, a space of 2½ feet, must be left between the building and the boundary lien. A tree planted in residence-land adjoining cultivated land must be placed 18 feet from the boundary line. Even then, if it casts a shade on adjacent cultivated land, the leaves must be removed, although it need not be cut down; yet if the adjacent land is meadow or rice field the tree must be cut down. In Iruma *kori*, a house must stand 1½ feet from the boundary line, and a storehouse 3 feet. When

[illegible] necessary in building to erect an enclosure[1] [illegible] premises upon a main road, it is customary to [illegible] the local officers for permission. If a tree on [illegible] land grows to more than 10 feet[2] in height, it is [illegible] to have a "shade-cutting." Whether small [illegible] called "thatch-covered"[3] may be planted around the [illegible] of a piece of cultivated land, is decided by consultation with the adjacent owners. In some villages it is required that, when timber trees are planted near cultivated land, a space of about 72 feet must be left on the southern side of the cultivated land and a space of about 60 feet on the western and northern sides. In Toyoshima *kori*, a new house must stand back half a foot from the boundary, making a distance of 1 foot between the houses. The object of this is to prevent the shedding of rain on adjacent land. But in recent times this rule has not been observed. The style of building known as "Osaka style" (in which the posts supporting the second story are placed directly on the front foundation line [instead of standing some distance in the rear]) is not permitted, except for theatres and prostitution-houses, which require large rooms and convenient egress in case of fire.[4] (Since the Restoration, a rule has been made that the foundation must stand 3 feet from the line).

In Shimosa *kuni*, Imba *kori*, ordinary trees must not be planted nearer to cultivated land than 1½ feet, and timber-trees not nearer than 18 feet. In Katori *kori*, in building a house it may be so placed as to shed rain upon the adjoining premises. To plant a tree near cultivated land the consent of the owner must be procured, and a timber

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1. *Soto-kakoi*. 2. One *jō*=ten *shaku*. 3. Because the rice-straw is tied around them to be sun-dried and become thatch. 4. The ordinary style gives only a gable roof with attic rooms, which do not give upon the street in such a manner as to allow speedy egress.

tree in such a spot must not in any case exceed 6 feet in height. A tree naturally growing there must be cut down immediately on the request of an adjacent owner.

TOSANDO. In Omi *kuni*, Shiga *kori*, a house must be so built as not to shed rain on the adjoining premises. In villages a space of 4 or 5 feet must be left within the boundary line, and a window opening on adjacent premises must have a screen. One may at pleasure plant trees close to the cultivated land of another; but in order not to give the adjacent owner the benefit of the rain collected and shed by the foliage, the foliage on the outer side of the tree is stripped off. In Inugami *kori*, a house must be built so as not to shed rain on the adjoining premises. A tree may not be planted near cultivated land so as to cast a shadow upon it; but sometimes a sum of money called "shade-rent"[1] is agreed upon and paid to the owner of the land so shaded. If such a tree grows beyond 10 feet in height, the excess is cut off.

In Mino *kuni*, Atsumi, Kagami, and Katagata *kori*, a house must be built so as not to shed rain on the adjoining premises; but an overlooking window is not objected to. Large trees cannot be transplanted near cultivated land. Trees already so planted must be trimmed off frequently. In Ahachi *kori*, a house must be built so as not to shed rain on the adjoining premises. If without consultation with the adjacent owners a house is built so high that the ends of the eaves overhang the adjoining premises, the builder cannot complain if the adjoining owners cut off the overhanging portion. If the second story of a house overlooks the adjoining premises, a screen must be put up. When a tree is near cultivated land, all growth over 10 feet must be lopped off. In Ono *kori*, before building a house in a town one must file with the feudal official a petition countersigned by his company and the ward officers of the place where the land is situated, and must also furnish a plan of the

1. *Kage-nengu.*

house. After due examination, permission is given. No such proceedings are necessary in case of a house in a village, but a house must stand back about 3 feet from the boundary line[1] of a road or of cultivated land; this is called "shade-withdrawal."[2]

In Shinano *kuni*, Takai *kori*, the house must be, on the south side, so placed that it does not shed rain on the land to the south, and on other sides, a space must be left equal to the length of the post [of the lower story].[3] Trees must not be planted near adjacent land on any side. In Saku *kori*, the foundation of a new house must be laid from 6 to 10 feet from the boundary. But in towns, where space is scarce, this rule is not observed. The owner of land standing high towards the south must see that he does not cut off the sunlight from residence-land [to the north of him]. But where the slope is upwards from south to north, the obligation is of course a light one. In Minochi *kori*, the tops of trees in residence or garden land must be lopped, so as not to obstruct the sunlight.

In Kotsuke *kuni*, Oharaki *kori*, the foundation of a house must be placed 1½ feet distant from the boundary line. No objection is taken if a second story or a window overlooks the adjoining premises. Trees planted on residence land close to cultivated land must stand 3 feet back from the boundary; and if they grow so as to cast shade on the adjoining premises, they must be lopped.

In Iwaki *kuni*, Shirakawa *kori*, before building a house in a town, one must file a petition showing the ground-plan; a ward-officer then makes an inspection and grants the permit. The house must stand 1½ feet from the boundary-line. In villages trees of a forest adjoining cultivated land are cut down all around for a space of 6 feet from the bound-

1. *Kaisen*. 2. *Kage-hiki*. 3. This would be about 10 feet. The object of the greater space on the north side was to prevent the interception of the sun's rays coming from the south.

ary; this is called "tree-shade-cutting." Trees planted on residence-land must stand 3 feet back from the boundary.

In Iwashiro *kuni*, Shinobu *kori*, before building a house in a town, one must file a writing stating that the adjoining owners have no objection and procure the permission of the feudal official. The foundation must be placed 1½ feet from the boundary line. No objection is made if a second story or a window overlooks adjoining premises. Where in villages a forest adjoins cultivated land, the trees are cut down for a space of 18 feet from the southern boundary of the cultivated land and of 9 feet from the northern boundary. In Aidzu *kori*, the distance from the boundary is 1½ feet for houses and 2½ feet for storehouses. Windows are forbidden on the northern and western sides; windows on the southern and eastern sides, when intended for the admission of light, are lawful, but must have a screen. Trees casting a shade on cultivated land are prohibited; and though mulberry-bushes may be planted 3 feet back from the boundary, they must be cut down if complaint is made by the adjoining owner.

In Rikuzen *kuni*, Toda *kori*, large trees must not be planted to the south of a house in such a way as to cut off sunlight. Dwellings and storehouses are usually placed 1½ feet from the next house, but further, if there would result any inconvenience to the neighbor by the shedding of rain from the roof; for every one is under an obligation to avoid causing annoyance in that way. In Miyagi *kori*, the distance between two houses should be 1½ feet (the term being "wall extremities"); but the parties may by agreement lessen this distance, and the rule is by no means generally observed.

In Mutsu *kuni*, Tsugaru *kori*, no tree may be transplanted so as to cast a shade on cultivated land, and the growth of trees already so placed must be cut off.

In Uzen *kuni*, Okitama *kori*, the distance between dwellings is customarily 1½ feet, between storehouses 3 feet. The roof must be so arranged that rain and snow

caught by it will not fall upon the adjacent premises. Trees in residence land must be planted at least 3 feet from the line; otherwise the adjacent owner may remove them.

In Ugo *kuni*, Akita *kori*, in towns, a house must be so placed that the rain is shed within the boundary line of the adjacent house. On the public highway the house must stand back 6 feet, and from the front a short roofing projects, forming what is known as the "lesser store,"[1] and shedding the rain upon the highway itself. Under and through this any one may pass.[2] If the structure is burnt, the owner receives by way of assistance of the authorities the sum of 1½ *kwammon*.

HOKUROKUDO. In Echizen *kuni*, Asuha *kori*, a fee called "shade-money" must be paid to a neighbor on planting a tree close to his land. In Tsuruga *kori*, trees must stand 3 feet from the boundary; if the growth overshadows the adjacent land, the parties meet, determine the proper length, and cut off the branches to that point. In building a house in a town the permission of the headman must first be obtained, after petition and inspection; and thus no controversies arise as to the overlooking of windows or the shedding of rain. Storehouses are placed 1 foot from the boundary. In Kambara *kori*, where it is desired to raise the level of the land with a view to erecting a house, the owner must before building notify the ward-representative, who inspects the premises, and if the adjacent owners do not object, permission is given. If it is desired to place the house nearer the boundary than is allowed by law, the consent of the adjacent owner must be obtained, compensation of course being made to him. The extra distance thus allowed is 1½ feet, and the expression "carpenter's

1. *Ko-*
for the p-
public w-

rule"[1] is used. A written instrument noting the exceptional mode of building is in these cases always given.

In Kaga *kuni*, Ishikawa *kori*, in towns, permission to build a house must first be obtained by petition to the ward-assembly, on inspection being first made to see that no obstruction of streets is to be caused. In villages no permission is needed if the front-beam[2] of the house is shorter than 15 feet; if it is longer than 18 feet, permission must be obtained by filing a petition with a ground plan of the house. When a house is built near cultivated land so as to cause injury by its shade, the owner must give in compensation an amount of rice equal to that produced from a piece of land about 6 feet by 12 feet. In Kawakita *kori*, the distance between adjacent houses is always 1½ feet, without regard to the relative heights. In Nogi *kori*, dwellings must be placed about 6 feet from the boundary.

In Echu *kuni*, Nei *kori*, one must first procure the inspection and consent of the feudal official before a new house can be built. In Imizu *kori*, no objection can be taken to the building of a second story, even though it affords a view of the next premises; still, a window may not be made merely for the purpose of gazing into one's neighbor's house. The distance between two houses must be at least 2 feet. In Tonami *kori*, the owner of a house situated on upland or uncultivated land may not plant a tree within 12 feet of adjoining [cultivated] land. Where there are a number of plots of cultivated land, each owner must be careful not to plant trees so as to injure adjacent land by the shade. If this is done without consent of the other owner, the latter has the right to remove it.

In Echigo *kuni*, Kambara *kori*, a house must stand half a foot from the boundary, the distance between the houses being 1 foot. In Kubiki *kori*, it is a long-established rule that each person's snow must fall on his own ground;

1. *Daiku-ho.* 2. *Mayeguchi-utsubori.*

and if owing to the size of a house or its proximity to the next, its snow accumulates on the neighboring premises, the owner must go and carry it off. Where a window is made on the side of a house, there must be a space of 2 or 3 feet between the houses, In Koshi *kori*, houses stand back 1½ feet from the boundary. To overlook adjacent land is not permitted. In villages trees must stand back 3 feet from the boundary; but if a tree properly placed grows so as to cut the light from adjoining fields, no objection can be made. In Kariha *kori*, trees and houses, in villages, must stand back 3 feet from the boundary. But in some villages, called "land-distributing villages,"[1] it is the custom to make a [periodical] distribution[2] of all its lands, and the possessions of all the villagers are equal;[3] and if in these there is anywhere a tree which injures adjacent fields, the village officials have it removed.

In Sado *kuni*, Sawata *kori*, a house must stand back from the boundary 7½ inches, if it has a shingled roof, and 1½ feet, if it has a thatched roof. The overlooking of adjacent land is no ground for objection. If in a village a tree casts shade on an adjacent field, it must be cut down without delay. If a grove next to a rice-field grows and finally cuts off light, the owner of the field may cut down all the trees for a space of 2½ feet from the boundary, without any notice to the owner of the grove.

SANINDO. In Tamba *kuni*, Kuwata *kori*, on building a house one must first file a so-called "house-building petition," with a certificate of consent from the adjacent owners, and must obtain permission from the feudal official; and no complaints by others are thereafter receivable. Trees must be planted 18 feet from the boundary of adjacent cultivated land; and natural growth which encroaches on this space must be cut off. In Taki *kori*, a house-foundation is laid 1½ feet from the boundary, and the presence of the

1. *Jiwari-mura.* 2. *Wari-kaye* (divide-change). 3. *Kohei.*

neighbors is requested on such an occasion; though not where a storehouse or a mere out-building is contemplated. Screens must be used for windows that overlook. Trees standing near boundaries of cultivated land must not be allowed to grow higher than 15 feet, and branches extending over the boundary must be lopped off.

In Tango *kuni*, Kasa *kori*, the branches of trees standing near boundaries are cut once in 3 years, a consultation being first held. In towns the consent of adjacent owners and the permission of the elder must be obtained before building; and subsequent complaints are therefore rare. In Kumano *kori*, a house must not stand so as to shed rain upon adjacent premises; storehouses stand $\frac{3}{5}$ of a foot from the boundary. Screens are required for windows that overlook.

In Tajima *kuni*, Izushi *kori*, in villages trees must stand 2 or 3 feet from the boundary; if the branches grow out over the boundary, the overhanging part must be lopped off, the measure being made by erecting a bamboo stick at the boundary. In towns the inspection and permission of a ward officer must be asked, before building a house; so that complaints about overlooking others' premises are rare. Storehouses stand back from the boundary $\frac{4}{5}$ of a foot, if a *hafuya*,[1] and $1\frac{3}{5}$ feet, if a *taruya*.[1]

In Idzumo *kuni*, Shimane *kori*, a new house must stand $1\frac{3}{5}$ feet from the adjacent land; but the rule does not apply to outhouses. Windows so placed as to overlook the adjacent premises must be screened. In Nogi *kori*, in towns, the distance from the boundary must be $1\frac{1}{2}$ feet, the whole space being thus 3 feet. The object of preserving it is to provide a space for the drain. But in villages there is no rule, the parties settling the matter among themselves. Trees may not be planted within 6 *ken* of the boundary, in lowland, or 4 *ken*, in upland, though these distances

1. Local names for special kinds of buildings.

vary according to the slope of the land. In Kamikado *kori*, a new house stands 1½ feet from the boundary, that is, 3 feet from the next house. The object of preserving this interval [called "sun-striking"] is to allow opportunity for ingress and egress at the occasion of a funeral or of a commemoration,[1] when it is customary for the family not to appear on the public highway. So that there is in these towns invariably a passage between adjacent houses. Overlooking windows are forbidden, unless some good reason exists; but even then they must be screened.

In Iwami *kuni*, Shima *kori*, the distance between two houses must be at least 2 feet, in order that rain may not be shed on adjacent premises. If a man builds nearer, so that the rain does fall upon the next land, he must construct, at his own expense, an eaves-trough. The owner of trees standing at the edge of another's cultivated land must cut them down, if they exceed 7 or 8 feet in height. Such trees are termed "nuisances," and their cutting down, "shade-cutting." In Naka *kori*, the distance between two houses must be at least 2 feet, each being 1 foot from the line. Overlooking windows may not be constructed in dwellings; but there is no restriction as to storehouses.

SANYODO. In Bigo *kuni*, Fukatsu *kori*, overlooking adjacent premises from a window on a second story is not allowed, and a shutter must be constructed. In Bichu *kuni*, Kuboya *kori*, houses must stand 1½ feet apart. If a clothes-drying platform is to be built on the roof, notice must first be given to adjacent owners. When cultivated land is turned into residence-land, the permission of the feudal official must be obtained, and no high tree can be planted so as to cut off the sun-light from adjacent cultivated land. In Mitsuki *kori*, in building a house, the ordinary petition and plan must be filed; after inspection by the village officer and

1. In honor of one who has passed away.

by the neighbors, and after consent obtained of both, the house may be built, and no objections will thereafter be entertained.

In Aki *kuni*, Numata and Aki *kori*, the permission of the feudal official must be obtained before building a town house, except in the case of outbuildings less than 8 feet in height. If the structure is not built according to the plan as authorized, it is torn down. Overlooking or shedding rain upon adjoining premises is forbidden by custom. A house near cultivated land in a village must stand back 8 feet; no fence higher than 8 feet and no tall tree may be put near cultivated land.

In Suwo *kuni*, Yoshihiki *kori*, in towns, the distance between two houses must be the length of a tile, that is, 1½ feet. Overlooking windows are forbidden, as well as overlooking second stories. In Kyuka *kori*, houses must stand 2 feet from each other, in order that the rain may not be shed on the adjoining premises. Houses may not be built in a district devoted to cultivation, unless for special reasons, and then not nearer than 48 feet to the adjacent cultivated land. Moreover, the covering of the roof with tiles is forbidden, reeds alone being permissible for this purpose.[1] In Tsuno *kori*, the permission of the deputy must be obtained before building a house on cultivated land, because a law forbids the erection of houses on rice-land, except where the lack of rain or the cutting off of irrigation channels has rendered the land unavailable for rice.

In Nagato *kuni*, Amu *kori*, overlooking windows in dwellings are forbidden. But in storehouses they may be as numerous as one pleases.

NANKAIDO. In Awa *kuni*, Nabigashi *kori*, in towns, a house may if necessary be built as near as 1 foot from the next house. Overlooking windows are prohibited, except

1. The object of this regulation does not appear, unless it be the discouragement of expensive structures.

[illegible]

[illegible]

In Iyo kuni, Uwa kori, the shedding of rain on adjoining land is forbidden, but this rule does not apply in the case of a low lean-to.

Hoshi-ba.[1] In Chikuzen kuni, Sawara and Naka kori, when a bamboo grove adjoins cultivated land, the overhanging trees must be cut down, a pole being erected to determine whether the tree overhangs: where the grove is at the foot of a hill, the trees are cut down for a distance of 45 feet from the foot of the hill.

In Chikugo kuni, Yamato kori, in towns, houses may stand close up to the highway line; but the space between two houses must be 1½ feet. In villages, the space must be such that rain is not shed by either on the adjoining premises. When cultivated land lies to the north or west of a house-site, the house must stand 9 feet from the line; if to the south or east, 3 feet; the object of the rule is to prevent the obstruction of sunlight.

In Buzen kuni, Kiku kori, the shedding of rain on adjacent premises is forbidden by custom, unless the structure is only a low lean-to. Overlooking windows must be guarded by screens, unless the neighbor gives a dispensation. But if the neighbor removes and a stranger takes his house, the latter may require a screen to be placed, notwithstanding the agreement by his predecessor. If a tree grows so as to overshadow adjoining land, it must be lopped. The trees of a forest at the foot of a hill must be cut down for a distance of 18 feet from the foot of the

1. *Hoshi* (drying)-*ba* (place).

hill; but the *utsugi*,[1] no matter how great its growth, has always been left untouched. In Shimoge *kori*, the boundary space for houses is 3 feet. Trees growing so large as to overshadow adjoining premises are cut down to about 6 feet high. In Usa *kori*, the boundary space must be such as to prevent the shedding of rain on adjoining premises. There is an instance in old times of a dispute about a boundary, which was determined by letting down a leaden plummet from the extremity of the eaves. When a tree grows so as to injure adjoining cultivated land by its shade, it is lopped, the measurement being made by the pole-erecting method above described.

In Hizen *kuni*, Fukaku *kori*, trees must in villages be placed 3 feet from the adjoining boundary. If a tree grows so as to overshadow cultivated land, and the neighbor petitions for redress, the branches must be lopped, under the inspection of the headman.

In Hyuga *kuni*, Miyazaki and Koyu *kori*, when a tree stands close to cultivated land in a village, it is customary to lop its branches every two or three years, under the inspection of the village officers, measuring the overhanging portion by the pole-erecting method. In Usuki *kori*, trees planted near cultivated land must stand 3 feet back from the boundary. If they grow so as to injure the adjoining land, the owner of the latter makes petition, on the ground of "obstruction to cultivation,"[2] and the feudal official orders the lopping of the branches.

3.—SUNDRY SERVITUDES.

KINAI. In Idzumi *kuni*, Otori *kori*, [in towns], where a plot of "pouch-land"[3] exists, a passage must be made by which the occupant can have egress to the main street. The ward-officials always see to it, when such a plot is trans-

1. *Deutzia scabra*. 2. *Saku-sawari*. 3. *Fukuro-chi*, a plot shut off by other land from access to the streets.

[illegible]

[illegible]

[illegible]

expense. Those who thus come in from other land to make use of the well need not pay any rent for the passage over the land where the well is situated.

In Uzen *kuni*, Okitama *kori*, those who use the water of a stream in its upper portion must not foul it. Where A and B have equal rights to the use of the water of an irrigation aqueduct, A being the upper owner, A must not foul the water or stop its flow or erect a mill without the consent of B. Nor must he so obstruct the stream as to flow the land of A to the latter's injury. Where A's land is so situated [in a town] that he cannot reach the highway without passing over the land of B, B must allow A to pass over his land, without charging any rent. But A must keep the passage in repair.

HOKUROKUDO. In Kaga *kuni*, Ishikawa *kori*, [in towns] where A's house is so situated that the family must walk over B's land in order to reach the highway, A need not pay any rent, but must keep the passage in repair and free from obstruction. In Yenuma *kori*, where the owner of rice-land intends to erect a dike to keep out water, the adjacent owners may object, if its erection would injure them. In Kawakita *kori*, where the source of a stream used for irrigation by village B lies in village A, the former hires the land of village A where the stream passes, paying the taxes and sundry charges. Sometimes, however, village A presents the land to village B, and the latter presents another piece in exchange to the former, the title being transferred in each case. But whatever method is adopted, village B alone has the obligation of keeping the channel in repair. Where a well on the land of A is used also by B, who has no well, the expense of repairing it must be borne jointly.

In Echu *kuni*, Imizu *kori*, the lower owner must receive the water flowing from the land of owners above; nor can he erect an embankment to set back the water upon the upper land. On the other hand the upper owner must

not make a channel which sheds upon the lower land water which would not otherwise have gone there.

In Echigo *kuni*, Kambara *kori*, where there are 8 plots of land, each (for instance) 10 *ken* in length,[1] and two of them, B and C, are "pouch-land," B has a right to pass out to the highway over A's plot, and C over both B's and A's; B pays a rent to A, and C to B, but not C to A.

In Sado *kuni*, Sawata *kori*, there is a town district named Aikawa, built upon the slope and at the foot of a steep hill; and each house is obliged to allow the passage through its premises of the sewage from houses above. But for constructing a new drain a consultation and the consent of all parties interested is necessary. If a dispute arises as to whether a particular drain is an ancient one, resort is had for settlement to the land-register.

SANINDO. In Idzumo *kuni*, Shimane *kori*, where A's land is so situated that he cannot reach the highway without passing over B's land, A has the right to do so, but must pay a rent to B or else give him a piece of land as compensation.

SANYODO. In Bizen *kuni*, Kamimichi *kori*, where the residents of plot B are accustomed to use a drain or take water from a well in plot A, they must pay a compensation for the use of the drain or the passage over the land. Those on plot A must not close the drain to the injury of the others, nor refuse to permit their passage.

In Suwo *kuni*, Kyuka *kori*, where those living on plot B are accustomed to use a well on plot A, the owner of A must not close the passage used by those from plot B. But if its use reduces the value of plot A, the latter must pay half the loss. Where B cannot reach the highway without passing over A's land, A must not close the passage to B; but the expense of maintaining it must be borne by both in equal shares.

1. One *ken*=about 6 feet.

NANKAIDO. In Awaji *kuni*, Tsuna *kori*, where there are three or four villages, one above the other, the lower villages are bound to receive the rain-water or river-water which flows down from the upper villages; while the latter, on the other hand, are bound not to foul it to the injury of the former.

In Awa *kuni*, Miyoshi *kori*, on hill sides there are often so-called "stair-fields."[1] The plots are situated on a number of different levels, each one rising above the other like steps of a staircase. The plots are owned by various persons, the boundary between one plot and the next higher one being the farthest point on the bank to which the lower owner can reach with his sickle and cut the grass. The upper owner is bound to remove all trees and grass growing on the bank down to the boundary, in order that the lower land may not be injured thereby. This is known as "shade-cutting."

SAIKAIDO. In Chikugo *kuni*, Mitsuma *kori*, where A cannot reach the highway without passing over B's land, B must not obstruct his passage, but may claim rent from A.

In Hizen *kuni*, Matsura *kori*, where a strip of sloping bank lies between adjacent plots, one of which is higher than the other, the bank is regarded as belonging to the lower owner.[2]

In Satsuma *kuni*, Satsuma *kori*, the slope of a bank of this sort belongs to the upper owner, unless the parties agree otherwise. But in the latter case the lower owner is bound not to alter the bank in such a way as to deprive the upper plot of its support.

4.—USUFRUCT.[3]

Cases where one receives the income of land without having the ownership are rare. There is a so-called

1. *Hashigo-dempata.* 2. So as to give him the control and enable him to prevent the injury referred to under Awa *kuni*, *supra*.
3. *Nyu* (enter, come to hand, receive)-*kwaku* (amount) *shotoku*

"retirement exemption,"[1] by which the father, who on retirement from the headship gives the patrimony to his son, receives for his own use the profits of a certain portion of the land. This right lasts during the father's lifetime. But there is no procedure in the nature of a public sanction, the matter being usually arranged between father and son; so that no general statements can be made in regard to it.[2]

5.—TEMPLE ENDOWMENTS.[3]

KINAI. In Settsu *kuni*, Higashinari *kori*, when land is given to a temple for supplying the expense of a celebration or of prayers or offerings for the dead, villagers, known as "managing-representatives,"[4] take charge of the property, collecting the profits and paying the rice-tax and sundry charges; so that the priests have not the complete property[5] in the land.

TOKAIDO. In Kai *kuni*, Koma *kori*, land donated by the Takeda family[6] is termed "blackseal land;"[7] by the Tokugawa family, "red-seal land."[8] Donations were also received from various other *daimyo*. Since the period Kwambun (1661-1673) cultivated and other lands belonging to farmers have been contributed to temples.[9] No taxes

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(acquisition). In the new Codes *yo* (use)-*yeki* (profits, fruits) is the term for the right technically known as "usufruct." 1. *Inkyo-men*. 2. But much might have been learned. The next section belongs perhaps under this head. 3. *Kifu* (grant, endow)-*chi*. 4. *Sewakata-sodai*. 5. *Shoyu-sensai*. 6. One of the most powerful families of the Middle Ages, whose most famous chief was Takeda Shingen. 7. *Koku-in-chi*. 8. *Shu-in-chi*, a seal customarily used by the Shogun in granting tax-free lands. 9. No reference to an edict of that date can be found. It seems as though a negative may have been here omitted, for elsewhere there had been prohibitions against temple-donations. See Chapter I., Kaga *kuni*, *supra*. But it may have been that the prohibitions of the Middle Ages against such donations had continued in force in Kai until the above period.

are imposed on black-seal or red-seal donations. But farmers' donations had to pay a portion of the produce as a tax.

TOSANDO. In Shinano *kuni*, Takai *kori*, temples are not permitted to pledge or hypothecate their endowed lands, whether contributed by the feudal lord or by farmers, though they have full right to the produce. Land given to a Shinto temple is termed "perpetual celebration fund;"[1] to a Buddhist temple, "perpetual tablet fund;"[2] in all cases, it is given forever, not for a term. Those who take cultivated or residence land in pledge or hypothec from temples are by an old law punishable,[3] even though the transaction be not a secret one. In Saku *kori*, donated land is controlled by the temple, and the donor has no interest in it. But the temple cannot dispose of it at pleasure.[4] In Ogata *kori*, the name of the temple is substituted in the title-deed for that of the former owner of the land, but the latter is written alongside in the document. In Hanu *kori*, the managing priest of the temple gives the donor a document acknowledging the gift. But the ownership[5] remains in the donor as before, the temple having only the usufruct.

In Rikuzen *kuni*, Toda *kori*, when donations are made, a transfer[6] may be recorded (in which case the temple pays the rice tax and sundry charges) or may not be recorded (in which case the donor continues to pay them), the latter being more common, and no document being needed in that case. (Since the Restoration, lands of the former sort have been regarded as belonging to the temple; of the latter, to the donor).

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1. *Eitai-saiten-ryo.* 2. *Eitai-ihai* (a wooden or metal tablet; usually in the shape of a grave-stone, inscribed with the name of one for whom prayers are to be offered)-*ryo.* 3. III Gembun (1738). See Rudorff, *Tokugawa Gesetzsammlung*, p. 55. 4. Lit., make free with (*jiyu ni suru*). See the law *supra.* 5. *Shayuken.* 6. *Takanuki* (striking out the assessment-entry).

In Uzen *kuni*, Okitama *kori*, in donations to temples, sometimes the ownership is transferred, sometimes only the usufruct. The former is the general practice.

In Ugo *kuni*, Hiraga *kori*, in donations to Buddhist temples, a document is made out, certifying that the land is given to the temple forever, and officially sealed by the headman, and is given to the temple, the transfer [1] being noted in the register. Land so given comes into the ownership of the temple in question.

HOKUROKUDO. In Kaga *kuni*, Ishikawa *kori*, when garden-land [2] or a building-plot [2] is donated to a Buddhist temple, the taxes are paid by the ward or village, and the priests have no power to dispose of it. Sometimes a small amount of cultivated land is given, being known as "Buddha consecrated-land" and subject to the above conditions. No document is necessary.

In Echigo *kuni*, Uwonuma *kori*, donation to a temple is accomplished by noting the transfer [1] in the register at the village office and delivering the land fo the temple, with a donation deed having the counterseal of the donor's relatives and the official seal of the headman. The temple thereafter pays taxes and incidental charges. Sometimes the donor, without delivering possession of the land, endows the temple with the annual profits of the land; [4] this is called "income-donation," [5] and the headman never puts his official seal upon such a deed.

SANINDO. In Iwami *kuni*, Naka *kori*, the managing priest pays the rice-tax and sundry charges on donated land; but may not sell or pledge it at will. The profits are applied to the maintenance of the temple-structure; the surplus, if any, goes to the priests themselves.

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1. *Takanuki*. The *nuki* (strike out probably refers to the striking out from the list of taxable land. The plot would of course be entered in the register in the proper place as owned by the temple. 2. *Niwa-chi*. 3. *Shiki-chi*. 4. *Tokumai*. 5. *Kifu-mai*.

In Idzumo *kuni*, Kamikado *kori*, when land is donated to the Great Temple,[1] the lords of the fief[2] (Chijima and Kitajima families) have control[3] of it; if it is given to a local temple,[4] the parishioners.[5] In either case the profits are accumulated and devoted to the maintenance of the buildings. In Shimane *kori*, in Shinto temples, the profits of donated land are in most cases donated to the maintenance of the buildings, under the supervision of a manager,[6] and the priests may not make free with them. But in the case of Buddhist temples, the priests collect the profits and apply them as they please; however, they may not pledge or sell the land at will.

SANYODO. In Mimasaka *kuni*, Shonan *kori*, the priests manage[7] donated land themselves, paying the rice-tax and sundry charges and keeping the remainder; but they may not pledge or sell the land.

In Suwo *kuni*, Yoshihiki *kori*, land donated to a Shinto temple is cultivated by the neighboring farmers and the profits are applied to the maintenance of the buildings; so that the land is not at the free disposal of the priests. The profits, however, of land donated to a Buddhist temple may be taken by the priests; but they cannot dispose of the land itself by hypothecating or pledging or selling it.

NANKAIDO. In Awaji *kuni*, Tsuna *kori*, donated land is used for the expense of a perpetual light in the temple or for offerings to the deity; and the donor inscribes on the deed the name of the temple and the fact that the right of mortgage and sale is given. Still it sometimes occurs that the land is restored to the donor, after mutual deliberation, if it appears that he is in distressed circumstances.

In Tosa *kuni*, Kochi *kori*, the donor of temple-land has the right to take it back, if he falls into need.

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1. *Taisha*,—one of the two chief national Shinto temples. 2. *Kuni-tsuko*,—an old word first used more than a thousand years ago. At that time it signified a free land-owner. See Simmons' "Notes on Land Tenure, etc.," pp. 65,246. 3. *Shihai*. 4. *Ujigami*. 5. *Ujiko*. 6. *Shihai-nin*. 7. *Tori-atsukai*.

SAIKAIDO. In Chikugo *kuni*, Mitsuma *kori*, in donations of land to temples, sometimes the ownership of the land is given, sometimes only the right of receiving the income from it, and there is no regular practice; but it is usual to prescribe that the profits shall be applied chiefly to the general expenses of the temple and not to the personal expenses of the priests.

6.—FORESTS.[1]

KINAI. In Yamato *kuni*, Yoshino *kori*, some of the farmers of the middle and higher classes own forest-land several tens of *cho*[2] in area. They sell the standing wood[3] to commercial houses in Osaka, Sakai, and elsewhere. These houses often furnish saplings of cryptomeria[4] or cypress,[5] which the land-owners plant and care for, and the matured trees after 30, 50, or even 100 years, are sold as directed by the commercial houses, the land-owners receiving for themselves five-tenths of the proceeds of the sale. Several saplings are originally planted in each *tsubo*[6] of land, and these as they grow are cut from time to time, so that finally only one tree remains in perhaps several *tsubo*, at the end of 40 or 50 years. These are the perquisites of the land-owner. When the whole forest is denuded by the tree-buyers, the land must of course be restored to the owners, who are called "forest-keepers."[7] The land-tax is paid by the land-owners, not the tree-buyers.

TOKAIDO. In Ise *kuni*, Wataraye *kori*, timber in forests belonging to individuals or to a village may be disposed of by its owner at pleasure. Forests owned by the assembly office for civil affairs of the Sacred Domain (the headquarters being at the temple-sites of Uji and Yamada) may be used for wood or grass by the people

1. *Rimboku*. 2. About 2½ acres. 3. *Tachi-ki*. 4. *Sugi* (*Cryptomeria japonica*). 5. *Hinoki* (*Retinispora obtusa*). 6. An area about six feet square. 7. *Yama-ban*.

of the neighborhood without any charge; but as no large timber is allowed to be cut, the rule is that a sickle may be carried by those who enter, but not a saw. But in the forests adjacent to the two temples themselves not even a fallen leaf may be picked up.

In Totomi *kuni*, Sano *kori*, any one may enter a forest belonging to his village and cut grass; cutting with a sickle in a forest is permissible, but not such cutting as is done with a saw, because the timber is used by the village, after due consultation, for the payment of village expenses and for the repair of river-banks.

In Kai *kuni*, Koma *kori*, forests are owned by villages or by individuals. In the former case the forest is kept standing as a protection against gales or for use in some extraordinary need. A sale is made after a consultation of all the villagers.

In Idzu *kuni*, Takata *kori*, forests belonging to an individual are called "private forests,"[1] and the owner can dispose of the timber as he pleases. Forests belonging in common to a number of villages[2] are called "deep-water forests" and cannot be sold.

In Rikuzen *kuni*, Toda *kori*, there are several sorts of forest-land. One is known as "land-appurtenant forest;"[3] it is owned by the feudal lord, and no taxes are imposed on it; but the villages are allowed freely to make use of it. (Since the Restoration these have gradually been sold and have come into the hands of the rich [land-owners], who themselves take all the timber and grass and allow no one else to do so). Another sort is known as "waste-place."[4] There is here a great deal of grass-land. No taxes are imposed, but the villages pay something for the privilege of taking the profits. The amount was proportioned to the assessed production of the village;[5] and when a villager

1. *Uchiyama.* 2. *Iriai mura-uchi.* 3. *Ji-zuki-yama;* the connection is not apparent. 4. *Are-ba.* 5. "This corresponds to the present district-tax (*ku-hi*)," the author adds in a note.

cut timber or mowed grass he paid a certain sum to the village. Another sort is know as "long-lease forest;"[1] this is owned by the feudal lord, but the use of it is given to private persons on payment of a fee, and they may cut timber or mow grass as they please. There are also private forests; but even in these there are certain trees which may not be cut by the owner without permission from the feudal office; these are pine,[2] cryptomeria,[3] cypress,[4] elm,[5] *katsura*,[6] pagoda-tree,[7] *shioji*,[8] camphor,[9] *ran*,[10] maple,[11] apricot,[12] white mulberry,[13] and others. The petition for permission to cut must go to the feudal deputy;[14] but if more than 30 trees of a size greater than 8 feet in circumference are to be cut, the petition must go to the magistrate[15] through the deputy. There is also a sort of forest known as "official tax forest."[16] In former times no tax was imposed, though the land was owned by individuals; afterwards taxes were imposed, and since then the owner may cut timber as he pleases. The taxes are estimated as follows. The feudal official takes, say, an area of 1 *chō*,[17] and reckons that the trees of 1 *tan* will be cut in the first year, estimating 10 years as the time required for a new growth on that spot; then the value of the timber from 1 *tan* is reckoned, the expense of carriage, etc., subtracted,

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1. I (stay)-*ku* (long time)-*ne* (root, tree). The above is the most plausible signification. 2. *Matsu*. The word "pine," though not strictly accurate, will be used for *matsu*. A variety, *himematsu*, apparently *Pinus paroiflore*, is also named in the text. 3. *Sugi*. 4. *Hinoki*. This is *Retinispora obtusa*. The *Sawara* (*Retinispora pisifera*) is also named, and a variety, *sawara sei*, which Rein does not mention. For all these trees, cf. Rein, vol. II. 5. *Keyaki*. 6. *Cercidiphyllum japonicum*. 7. *Yenju* (*Sophora japonica*). 8. *Calopanax ricinifolia*. 9. *Kusunoki*. 10. Rein does not give this. 11. *Momiji*. 12. *Mume*, commonly called "plum" by foreigners in Japan. 13. *Kuwa*. 14. *Daikwan*. 15. *Bugyo*, probably the *kori-bugyo*, who managed all the affairs of a large district. 16. *Go nengu-yama*, now called *zei-yama*. 17. 1 *cho*= about 2½ acres, 1 *cho*=10 *tan*.

and the probable net proceeds ascertained. Four-tenths of this are to be paid in taxes; the rest the owner takes. In the second year, the process is repeated for another *tan* of area; and so on, until after 10 years the tax is again assessed on the first *tan*. Forests owned by a whole village are exempt from taxation, and may be cut without restriction. Usually the trees are cut and sold by the village itself, and the proceeds divided among the villagers equally. Ordinary trees [not having a salable value] are cut and divided equally among the villagers. Forests of the feudal lord are managed by forest-officials; and no one may cut the timber except when it is sold by the lord. There is a sort of forest known as "possession-forest,"[1] exempt from taxes and managed by the villages. Each villager contributes, according to his assessed production, to the expense of taking care it of. (After the Restoration, the land was planted with trees and given to the feudal office, which appointed a forest-keeper;[2] so that the forest has come entirely into the hands of feudal officials and the people have no rights in it).[3]

In Uzen *kuni*, Okitama *kori*, one who cuts timber on a mountain has the right to get it to the foot, even though he passes over others' land in so doing and injures their trees.

In Ugo *kuni*, Akita *kori*, the owner of forest-land may cut timber as he pleases, except that permission must be obtained from the forest-superintendent[4] before cutting cryptomeria or cypress.[5] If more than 100 of these sorts are to be cut, the preliminary inspection of the land is made by the forest-superintendent himself; if less, by a keeper.[6] In the former case, 3 out of every 100 (called the "official-

1. *Shoji-yama*. 2. *Yamamori*. 3. This passage must have been written early in the seventies or in forgetfulness of the changes by which, in August, 1871, the *han*, or clan-fiefs, became *ken* or prefectures under the Central Government. But perhaps in these western mountain districts, the word *han* still lingered when Mr. Ikuta visited them, and was applied to the prefectural authorities. 4. *Bokuzan-kata*. 5. *Hinoki*. 6. *Yamamori*.

percentage"[1]) are to be given to the feudal lord; but these the owner then proceeds to buy back. There is no fixed percentage where less than 100 are cut; nor is there any in case of pine timber, which, by the way, is also not to be cut without permission.

HOKUROKUDO. In Kaga *kuni*, Ishikawa *kori*, a law of the fief requires that permission must be obtained in order to cut down any of the so-called "seven timbers" (pine, cryptomeria, oak,[2] paulownia,[3] elm,[4] cypress, and fir[5]), whether owned by an individual or by the village in common. The mountain pines are ranked with the forests belonging to the fief and are forbidden to be cut. Ordinary trees owned by the village in common, such as those planted to prevent snow-slides on a mountain side or to keep off the wind or to protect against storms from the ocean (all these are known as "shelter from calamities"), may be cut down, but not wantonly. In Nomi *kori*, one may have the right of possession of another person's forest-land, and may sub-let it for a period not longer than the lessor's own term, but notice must first be given to the owner.

In Noto *kuni*, Hoshi *kori*, forests along the sea shore are called "fish-touching forests,"[6] and the owner is under an obligation not to cut them down. If such land belongs to another village than that in which it is situated, the latter pays a rent to the former to secure its preservation. In Suzu *kori*, the so-called "seven timbers" (pine, cryptomeria, elm, fir, oak, paulownia,—these, when greater in circumfer-

1. *O-wariai*. 2. *Kashi*. 3. *Kiri*. 4. *Tsuki* (same as *keyaki*). 5. *Toga* (same as *tsuga*); *Abies tsuga*. 6. *Uwo-tsuki-sanrin*. The reference is to the protection which these forests were intended to give against ocean storms (see the preceding paragraph). *Tsuki* is prolific in idiomatic uses; but the idea is possibly that the fish almost "stick to" (this is an admissible meaning) the trees when dashed against them by the waves. Observe that in the Japanese thought "fish" is the active subject, "touch" the verb denoting its action; the "*tsuki*" is not predicated of the forest, but of the fish.

ence than 1 foot—and chestnut[1] —when greater than 5 feet) may not be cut down, even on private land, unless permission is received from the feudal official to do so on the ground that one cannot otherwise pay his taxes.

In Echu *kuni*, Nei *kori*, timber belonging to a Shinto temple may be cut down by the village, on consultation with the temple-chief, and is regarded as a common possession of the village.

In Echigo *kuni*, Uwonuma *kori*, timber belonging to the temple of the local deity cannot be cut except upon a consultation of the whole village, and it is the custom to apply the timber or its proceeds to the use of the temple.

SANINDO. In Idzumo *kuni*, Shimane *kori*, where a forest is owned by a village in common, the timber is used for the repair of aqueducts, dams, roads, and bridges; but sometimes it is sold and the proceeds used to help out the village expenses. Forests owned by individuals may be cut by them as they please.

In Iwami *kuni*, Naka *kori*, when pine timber is cut, even in private forests, one-tenth of the value must be given to the feudal lord.

In Bizen *kuni*, Kamimichi *kori*, even in private forests the inspection and permission of the chief headman must first be asked before timber can be cut; but in any case a law prohibits a complete destruction of timber, requiring a certain number of trees per *tsubo* to be reserved.

In Suwo *kuni*, Yoshihiki *kori*, one may obtain permission from the feudal lord, on payment of a small tax, to occupy forest-land of the lord and take all the profits issuing therefrom. Such land is called "officially-loaned forest land."[2]

In Suwo *kuni*, Kyuka *kori*, the individual owners of a private forest mark the boundaries of their portions by stones or trees; and such boundary trees no one may cut. But

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1. *Kuri*. 2. *O-azuke-yama*.

even in private forests the feudal official seals certain of the largest useful trees, such as camphor, pine, cypress and cryptomeria, [thus prohibiting their destruction without permission].

In Nagato *kuni*, Amu *kori*, there are in every village two or three forests to supply wood for river-bank palisades, heavy beams, bamboo dike-frames, river-depth indicators, wells, aqueducts, dams, and other useful purposes. These places are called "public-works forests;" and whenever there is to be a timber-felling, the village first obtains permission from the feudal official. There are also places called "loss-compensating forests" the common property of of the village. These are places reserved for relief on occasions of special expense in a village undertaking, or of general distress among the people. For cutting these as well as private forests the permission of the feudal office must first be obtained. In Toyoda *kori*, the best tree in every forest, whether owned by an individual or owned in common by a village, is selected by the feudal official and entered in an official book.[1] This tree is called "book-tree"[2] and cannot be cut down. If, however, it it is required for some public purpose, such as the repair of a bridge, the next best tree is selected and entered instead in the book.

NANKAIDO. In Awa *kuni*, Mima *kori*, headmen, country *samurai*,[3] and others owning large forests often make a profit by selling the timber to those whose business it is to deal with timber or woods. The transaction differs in different cases. When timber for clogs[4] is sold, the price is fixed according to the size of the ravine where the trees stand; the timber is then cut and taken down to the towns. When the timber is intended for charcoal, the price is determined in the same way, but the charcoal is made on the spot. When bird-lime[5] material is sold, it is taken

1. *Chobo*. 2. *Cho-boku*. 3. *Kyo-shi* (the same as *goshi*). 4. *Geta*. 5. *Mochi*,—made probably from the *Ilex integra (mochi no ki)*.

from the standing trees, and the price is fixed by the number of tubfuls taken. When firewood is sold, the trees are cut into lengths of 3 feet 5 or 6 inches,[1] and these are heaped in piles (called *hiro*),[2] measuring 6 feet in height and in thickness; the price is fixed by the number of *hiro*. When timber is sold for trays, cups, and other woodenware the artisans (called "wood-workers") take their families to the forest, build huts, and stay there [during the season,] moving about from place to place. A tax is due from them once in 3 or 4 years; and the number of children in a family is taken into account in computing the tax. In Miyoshi *kori*, there is an officer called "floating-timber[3] officer." When logs which are being floated down a stream are dispersed by a storm or flood, the officer goes about examining the river-banks and collects all floating-timber, whether bearing the owner's mark[4] or not, despositing it with the village officers and taking a deposit-receipt. Subsequently he restores the marked timber to its owners, and holds a secret-ticket auction[5] of the remainder, the proceeds being paid in to the feudal official and laid aside for an occasion of great need. When the finder[6] of floating timber restores it to the owner, the latter is obliged by law to give him a reasonable fee as a reward for finding.

In Tosa *kuni*, Kochi *kori*, private forests are of various sorts,—"local forest"[7] (owned by a village in common), "home-forest"[8] (owned by an individual), and "cleared-upland"[9] (sometimes called "cleared and changed upland"[10]). Some of them extend over a whole ravine, others over several *cho*. In the third kind mentioned, the timber is used for firewood or charcoal, and the land, after being

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1. The Japanese foot has 10 inches. 2. This is written in the *kana*. 3. *Ryu-boku*. 4. *Koku-in*. 5. See Part II, "Sales." 6. *Hiroi-nin*. 7. *Tokoro-bayashi*. 8. *Ya-gakari* (family-managed). 9. *Kiri-batake*. 10. *Kiri-kaye batake*. For the explanation, see the next lines.

cleared of undergrowth and grass, is planted with millet,[1] pulse,[2] and soy-bean.[3] This is called "rotation clearing;"[4] for a portion is cleared at a time, the whole being finished in from 16 to 20 years, and by that time a new growth is ready for cutting in the portion first cleared. When the "cleared upland" plot is as large as 1 *tan*, a tax of 2 *sho* of rice is imposed. The timber of the forests of the feudal lord is sold sometimes on petition from an intending buyer, sometimes (in the case of cypress and cryptomeria) by secret-ticket auction. There are two methods of sale; in one (known as "forest-product"[5]) the number of trees is not counted, the purchase being made by the surface-area; in the other (known as "cutting the standing timber"[6]) a count is made of the trees over a certain size and a price fixed on this basis. In the former case, the bargain is made with the feudal official and he gives a certificate to the buyer, who usually goes to the Osaka wholesale houses and raises money on it.[7] The term during which the timber is to be cleared is usually 10 years, but to this, if necessary, a second term of 9 years is added, and a third of 8 years, the whole thus reaching 27 years. The buyer usually counts on taking the whole term for the clearing. The forest is usually marked off into 8 parts, the lowest being cleared first. The price is paid in two instalments; in a 1000 *yen*[8] purchase, for instance, 400 down and 600 at a later time. In the "standing-timber" sale, the term for cutting depends upon the number of trees sold.

SAIKAIDO. In Chikugo *kuni*, Miike *kori*, the permission of the feudal officials is necessary before cutting down trees more than 5 feet in circumference, even in private forests.

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1. *Hiye;* for the exact significance as regards varieties, see Rein, vol. II., s. v. 2. *Mame.* 3. *Daizu;* a variety of *mame.* 4. *Mawari-kiri.* 5. *Yama-shidashi*; this is the most probable meaning. 6. *Tachi-kigiri.* 7. Apparently to pay for the timber. 8. The author sometimes uses *yen* where he ought to have used *ryo*, the old unit; *yen* were not coined till 1871.

In Hizen *kuni*, Saga *kori*, camphor trees, whether large or small, may not be cut down without permission of the feudal office.

In Higo *kuni*, Aso *kori*, there are four kinds of forest-land,—"official forest,"[1] "public forest,"[2] "common forest,"[3] and "private forest."[4] The people of the locality take care of the official forests, so that any one who has a ticket may enter and cut ordinary trees for fuel,—but not cryptomeria nor cypress. A public forest belongs to the fief, but as it has been planted by the people of the locality, the trees or the profits from them are used for the repair of important temples, official buildings, dikes and bridges, or for occasional relief in case of calamity by fire or flood. In all these cases the officers of the ward or village consult with the superintendents of the forest,[5] and obtain permission of the district-deputy[6] before cutting. In the case of common forests of a ward or village, the ward or village officers, after holding deliberation and obtaining permission from the forest-superintendent, cut down the timber and apply the proceeds to the general expenses of the ward or village. Private forests may be cut at pleasure by the owner, except the trees on the boundary between private and official forests. But even in private or common forests useful trees, such as elm, oak, camphor, chestnut, *tochi*,[7] or paulownia, of more than 6 feet in circumference, are entered in a forest-register,[8] and cannot be cut without good reason. In Kyuma *kori*, persons sometimes make a plantation of cryptomeria or cypress in the waste demesne lands open to them ; and the custom is for half the trees, when grown, to go to the lord and half to the planter. This is called "five-parts planting."[9] In Amakusa *kori*, no tax is imposed on "public forests"[10] or

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1. *Kwan-zan.* 2. *Ko-zan.* 3. *Kyu-zan.* 4. *Shiyu-zan.* 5. *Yama-shihai-yaku.* 6. *Gundai.* 7. *Aesculus tubinata.* 8. *Yama-ne-cho.* 9. *Gobu-sashi ;* that is, five in ten. 10. *Ko-zan ;* see *supra.*

private forests. But when timber is sold, the buyer must pay a fee of one-tenth of the price to the shipping-master (who is one of the forestry staff), and of this amount the latter sends seven-tenths to the feudal treasury, keeping the remainder by way of salary and also paying the expense of forwarding the lord's share to the treasury.

In Osumi *kuni*, Aira *kori*, it is necessary, in case of trees applicable to the lord's use, such as elm, camphor, oak, cryptomeria, pine, cypress, paulownia and fir, to obtain permission for cutting from the feudal officials, even in case of private forests.

7.—PASTURES.[1]

TOKAIDO. In Kai *kuni*, Yamanashi *kori*, there are various sorts of pasture-land,—"village-owned small-products places,"[2] "individually-owned small-products places,"[3] "wooded wastes," and others. There is also a "common hillside-pasture,"[4] owned by a number of villages in common; those who take grass from this must in all cases pay some tax. There are also pastures [formerly

1. *Ma* (horse) *gusa* (wild grass)-*ba* (place). *Magusa* is written with one ideograph, and has commonly the derived meaning of "hay." But it must have been formed in the above manner. See Rein, vol. II, 183, for a description. Though "pasture" seems the best word, the animals do not pasture on the land; the fodder is cut and fed to them. 2. *Mura-mochi-ko-mononari-ba*; the *ko* indicates sundry inferior products,—grass, etc. 3. *Ichinin-mochi ko-mononari-ba*. 4. *Sanrin-koya*. Any one who will consult Rein, vol. I, 144, 146, vol. II, 212, 217, will understand how it is that mountain (hill), forest, and pasture are so inextricably mingled in Japanese customs. In *san*-(mountain)-*rin* (forest) and *rinzan* one finds "mountain" and "forest" constantly united in phrase, and the difficulty of rendering into English is only increased when the notion of *magusa* is to be added. It may be sufficient to remember that the Japanese farmer usually thinks of a forest as up on the hill-side or the mountain-side, and of the grass-land as in the same place, and that perhaps the two lie in scattered patches over the

belonging to the Shogunate] (now known as "Old Shogunate wooded land,")[1] where taxes are sometimes paid for the right to cut.

TOSANDO. In Shinano *kuni*, Takai *kori*, the villagers were fomerly bound to clear off, every 4 or 5 years, the land covered with underbrush; this was called "brake-cutting."[2] But now such places are simply burnt over, the proceeding being termed "setting fire."[3] In Minochi *kori*, no villager may enter the pasture until it is opened[4] for the year. The grass matures in the 5th or 6th month, and the villagers hold a meeting[5] and fix a day, which is known as "opening day for the hillside."[6] A pasture common to a number of villages[7] is opened when the order to put in the sickle[8] is given by the managing village[9] or by the proprietor-village.[10] Where the pasture is the property of a single village, the order to cut is given to the villagers by the village officers. At first "morning mowing"[11] alone is permitted (this signifies that the grass may be cut only in the morning and may not be laid out on the spot to dry); after several days "noon-mowing"[12] is allowed, and the villagers may cut at any time of the day and may dry the grass on the land. In Saku *kori*, the open

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same hill-side. Hence a looseness in the use of all three terms. One can merely translate as literally as possible and leave the words to picture the place. But *sanrin* and *rinzan* are always here rendered "forest" or "wood," while *yama* is given its original meaning. It is, however, a question whether the idea of "forest" or "hill" is more prominent in *yama* as used in the following compounds. 4. *Iri* (enter, use)-*ai* (meet, together) *yama magusaba*. *Iriai* has the derived sense of "in common." 1. *Kyu-bakufu rinzan*. 2. *Yabu* (bamboo brake)-*kari*. 3. *Hi-ire*. 4. *Yama-ake*. 5. *Yoriai*. 6. *Yama-biraki-bi*. 7. *Iriai no magusaba*. 8. *Kama-ire*. 9. *Toban-mura*. 10. *Jimoto-mura*. That is, either a number of villages owned the land in common, and each one in turn managed affairs for a year; or else one village, the proprietor of the land, allowed others to use it, and accordingly set the time for entrance. 11. *Asa-kusa kari*. 12. *Hiru-kusa-kari*.

space used as a pasture in common by a number of villages may not be entered [for cutting] by the members of any other village; if a trespasser is found, his sickle and whatever else he carries are taken from him; if he enters with a horse, his horse is taken. No tree may be planted and no cultivation undertaken in a pasture.

In Rikuzen *kuni*, Toda *kori*, pasture-land is called "bare-hillside"[1] or "ravine-land", and no taxes are imposed. Sometimes it is owned in common by a number of villages, sometimes by one only. No special regulations exist in either case, and each one may cut as he pleases. In the latter case, however, a day (called "waste-land opening"[2] or "clover-hillside-opening"[3]) is fixed by the headman for beginning to cut, and notice is given to the villagers. On one sort of pasture a so-called "waste-land service-money"[4] is imposed; the money is paid by the villages sharing the right to cut, and is levied according to the number of horses owned in each.

In Ugo *kuni*, Hiraga *kori*, pasture-land is usually owned by the whole village; and no taxes are imposed on it. There are no regulations as to the day when cutting may begin, nor as to the place where any particular family or other set of persons is to cut. "Balk mowing" (of the grass on the balks between the plots) is permissible only to the owners of the plats. There is also a lowland-pasture (called "grass-producing land,") which may be used only by the owner of the land.

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1. *Su-yama*. 2. *No-biraki*. 3. *Hagi-yama-biraki*. *Hagi* properly signifies several varieties of the Lespedeza, and not merely the one known as "Japan clover." 4. *No* (waste land)-*te* (hand)-*yaku* (labor-services)-*kin* (money). This was probably a money commutation of labor services due, perhaps, for the clearing of the land. The *te* apparently has the force of "manual labor;" but may mean "incidental." But compare *yama no te* (the region lying near or on the mountains).

SANINDO. In Idzumo *kuni*, Shimane *kori*, in villages, a "waste-hillside tax"[1] must be paid for the privilege of mowing. Until the season arrives no one may enter the land; and the opening day (called "hillside-opening"[2]) is appointed by the village officials and announced to the people 2 or 3 days beforehand, and on the day fixed all the villagers—men, women, and children—go out to the hillside early in the morning and begin to cut. After the season thus opens, each one may cut at his pleasure. In the sea-coast villages they regulate the gathering of sea-plants[3] in the same manner.

SANYODO. In Mimasaka *kuni*, Katsunami *kori*, where pasture-land is owned by a number of villages in common, the members of other villages are strictly fordidden to cut the grass or even to enter the place. The "hillside-opening" takes place on a day [appointed by the village officers and] announced to the people 2 or 3 days beforehand by a written notice; this day usually occurs between the 10th and 15th day after the 88th night after the Spring Equinox. After the opening day, each one may cut as he pleases. Pasture-land owned by a single village is managed in the same way; but if there is a surplus of grass beyond the needs of the villages, it may be sold to members of other villages.

In Bichū *kuni*, Kuboya *kori*, pasture-land is known as "waste-hillside" or "poor-people's-support hillside." The former may be managed jointly by several villages (it is then called "common[4] pasture,") or may belong to a single village only; in either case a portion of it is frequently brought under cultivation or planted with trees. The "poor people's-support hillside" is land occupied by "broken" families, who gain a livelihood by cutting and selling the timber on the hillside. These families formerly owned barren land in the village; not land absolutely waste and

1. *Noyama zei.* 2. *Yama no kuchiake.* 3. *Mo.* Rein does not mention this. 4. *Iriai.*

uncultivated, but land subject to taxation and yet quite unproductive. The owner, falling into distressed circumstances, offered it to others, asking to have it taken off his hands, and no one being willing to take it, it was given by him to the village, and he retired to the hillside and made his living as has been related. Some of these persons have ultimately acquired means again; but as they have once received aid from the village, their rights are inferior and they are not regarded as equals in social intercourse.

In Suwo *kuni*, Tsuno *kori*, pasture-land (or "undergrowth-hillside") is owned either in common by several villages or by one alone. In the former case, those who belong to these villages cut as they please; but no others may enter. In the latter case, there is a similar rule of exclusion; but sometimes another village pays a rent for the privilege of using the pasture; yet even this is only where such a custom has existed since old times.

In Nagato *kuni*, Toyoda *kori*, on the shore of main land and island they gather sea-plants (the phrase being "sea-plant reaping" or "sea-plant collecting,") in the same way that the hillside villages cut the grass in pasture-land.

NANKAIDO. In Awa *kuni*, Mima *kori*, there is a sort of pasture-land known as "reed-place,"[1] usually 70 or 80 *che* in extent, and owned by the village. From this are obtained reeds for thatching; and when one of the villagers wishes to repair or renew his thatch, he notifies the headman, who permits him to cut what is necessary. When it is desired to cut timber from village land, the same procedure is necessary. They sometimes have societies,[2] called "building-societies."[3] When a member of the society is about to repair or to build a house, each of the others gives him 6 bundles of thatch and two of rope.

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1. *Karukayaba*. *Kaya* is a [illegible]tch-reed (*Imperata arundinacea*), *karu-kaya* is a variety not [illegible]ed by Rein. 2. *Kumiai*. 3. *Fushin-gumi*.

SAIKAIDO. In Higo *kuni*, Akita *kori*, pasture-land may belong to a single village, and in this case the members of other villages may not enter without permission; or may be used by several in common, the land being owned by a single village; or may be hired by a number of villages from another village, to which rent is paid. But besides this there are other ways of owning pasture-land,—more than there is space to describe.

8.—PONDS AND SWAMPS.

TOSANDO. In Rikuzen *kuni*, Sosa *kori*, swamps are, like rivers, the property of the feudal lord; so that those who wish to fish or hunt game or cut rushes must pay a tax for the privilege. The taxes are paid to certain managers appointed by the village; these turn over the money to the village, and the latter sends it to the feudal office. The profits[1] obtained from the pond or swamp are divided among the villagers.

In Uzen *kuni*, Okitama *kori*, the boundary of a pond or swamp is the line to which the water reaches, but this is considered to include the portion where the rushes grow on the edge. When a pond or swamp lies wholly within the limits of one village, it is the property of that village; but if it lies on the boundary between two villages, it is owned jointly. The use of it, in either case, is open to all members of the village or villages, and not exclusively to the land-owners along the shore.

9.—DRAINS.[2]

KINAI. In Yamato *kuni*, Soyegami *kori*, in towns, the cleaning and repair of drains are performed at the expense

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1. *Riyeki*, i. e. the fish, game, etc. The paragraph seems to indicate that the pond or swamp was worked by men employed by the village, the produce of their work going to the general profit of the villagers. 2. *Kasui* or *shita mizu* (literally, underneath-water).

of the neighborhood as a whole, whether the drain be used by one person or by many. There are, however, certain limitations of this sort, that drains running east and west [through the ward] are maintained at the expense of those whose land borders thereon, a similar rule applying to drains running north and south.[1]

TOKAIDO. In Musashi *kuni*, Toyoshima *kori*, [in towns] a drain crossing a public highway is cleaned at the expense of the residents of the block [which it serves,] if it is of the grade known as "great drain;"[2] if smaller, the expense is paid by the owners adjacent to the drain. In some quarters, an association (consisting of a number of *samurai* or a number of townspeople[3]) undertakes the cleaning of "great drains." In the case of *samurai*, the members pay according to the income they draw from the Government; in the case of townspeople, according to the number of houses owned by each. Certain persons undertake as a business the cleaning of drains. (But since the Restoration this has been abolished. Drains crossing a public highway are cleaned by the Prefectural Government; all others by the local ward-office.)

TOSANDO. In Shinano *kuni*, Saku *kori*, a drain serving a whole village or a number of persons is cleaned at the expense of the whole village. But if it is appurtenant to one estate only, the owner of the estate must clean [the portion used by him], whether it is at the upper or the lower end.[4]

SANINDO. In Iwami *kuni*, Naka *kori*, in towns, the repair and cleaning of drains are at the expense of the house-

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1. That is, apparently, the community of interest was limited to a district served by a large drain running through a whole ward or other large district. 2. *Dai-kasui*. A drain which did not stop when it reached the highway and met the highway drain would be the basis of a system of tributary drains in the indefinite region known as a *cho*. 3. *Chonin*, i. e. merchants. 4. This paragraph is not at all clear; and [illegible]me may be said of this whole section.

owners using them, and the rent[1] paid for their use is due from the same persons. In villages, the persons paying are the land-owners served by the drain.

SANYODO. In Suwo *kuni*, Yoshihiki *kori*, in towns, repair and cleaning of drains are undertaken by those through whose land they run. But in some districts the wards or the feudal authorities take charge.

NANKAIDO. In Sanuki *kuni*, Kagami *kori*, in towns, a space is reserved on one side of every drain, called a "place to throw out the refuse." The cleaning of the drain is an obligation resting on every member of the village, and it is done under the inspection of the ward officers.

10.—WAYS.[2]

TOKAIDO. In Owari *kuni*, Aichi *kori*, the width of a wagon-road[3] is fixed at from 6 to 7 feet, and of a field-path[4] at from 3 to 4 feet. Repairs of the latter are made by the village in which they are situated; of the former, by an association of villages[5] existing since ancient times.

In Totomi *kuni*, Sano *kori*, a road for horses must, by an old law, be about 9 feet wide, and a cultivation-path[6] about 3 feet wide. When it is desired to close up an old road and construct a new one, the feudal official must investigate the plan, if the village after a consultation cannot come to a satisfactory decision.

In Sagami *kuni*, Kamakura *kori*, the width of a field-path is fixed at 3 feet, and of a road for oxen and horses at 6 feet. Notwithstanding inconvenience to travel, it is customary that a new road shall not be opened without the consent of the owners of the land through which it is to pass.

In Kai *kuni*, Tsuru *kori*, the width of the Kai Province Sea-Road,[7] one of the Five Sea-Roads, is from 2 to 3 *ken*.[8]

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1. *Shaku-ryo*. Why it was paid does not appear. 2. *Do-ro*. 3. *Kuruma-michi*. 4. *Nogyo-michi*. 5. *Kumiai mura-mura*. 6. *Sakumichi*. 7. *Koshu* (the province of Kai)-*Kaido*. 8. One *ken*=about 6 feet.

The repairs are usually made at the expense of the fief. But village-roads[1] and branch-roads[2] not more than 6 or 7 feet in width are repaired either by the whole village or by the set of persons [served by the road.] Where a way is used by a particular set of personss and passes through another village, it is repaired by those who use it, and not by that village.

In Musashi *kuni*, Toyoshima *kori*, ways are repaired by the feudal Board of Works, the expense being paid by each block, and apportioned among the proprietors.

TOSANDO. In Shinano *kuni*, Saku *kori*, the width of a great road is usually 9 feet, that of a medium road 6 feet, and of a small road (or field-road, as it is sometimes called) 3 feet. Roads running past houses are repaired by the house-owners, through cultivated land, by the owners of the land which it serves. The cleaning and repairing are done twice a year, in spring and autumn. Repairs of bridges are made by the village as a whole. In Hanu *kori*, a village road is 2 *ken* in width, a field-road[4] 4 feet, and a house road about 5 feet. In Takai *kori*, the owner of cultivated land always leaves a space of 3 feet between the road and his crop, so as to prevent its being injured by the passing horses or vehicles.

In Rikuzen *kuni*, Miyagi *kori*, the width of a great road[5] is 6 *ken*; and that of a petty road[6] is the same, including an "eaves-space"[7] on either side. Repairs and cleaning are done by the owners along the side, of whichever sort the road is. In Toda *kori*, the width of a field-road is usually 1 *ken* or more. The repairs of the road and of its bridges, if any, are made by those who are accustomed to pass over it in carrying on their cultivation; and those only may cut

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1. *Mura-michi*. 2. *Shi-do*. 3. I. e. the cultivators of a certain neighborhood. 4. *Sakuba-michi*. 5. *Okwan-michi*. 6. *Komichi*. 7. *Naki* (eaves)-*shita* (ni).

the grass along the road. A road running from one village to another is usually 1 to 2 *ken* in width and is repaired by the two villages jointly. A branch great-road[1] is usually not more than 2 *ken* wide, and is repaired by the villages that use it. A great Sea-Road[2] is usually repaired at the expense of the fief. It is the custom for funeral and marriage processions to pass along the public highway, even though the field-road would be nearer. The expense of examining and burying one who has fallen and died by the wayside[3] is paid by the whole village, and is assessed equally upon all the houses. This is true even when the man is found upon land owned by an individual.

In Uzen *kuni*, Okitama *kori*, [in towns,] roads are repaired and cleaned by those past whose residences the road runs, whether it be residence-land proper or an appurtenant possession.[4] If the latter is at a distance from the owner's home, some one living near it acts as undertaker[5] of the work, by appointment of the owner. [In villages] the width of a field-road is sometimes 3 feet, sometimes 5 feet, and there is no regular width. If any extraordinary damage is done to it, the expense of repairs (usually paid by the owners on both sides) is shared by the

1. *Waki-okwan-michi*,—probably equivalent to *shido*. 2. *Okwan-kaido*,—the largest of all roads, here probably the Oshu-kaido. 3. *Yuki* (going)-*taore* (fall down),—i. e. travellers killed by highwaymen or beggars dying of want. The duty of paying these expenses was not infrequently the subject of litigation between villages,—much in the same way that the settlement of paupers has given rise to a peculiar class of cases in Anglo-American law. See Simmons' "Notes on Land Tenure, etc.", p.p. 195, 200, 206. See also *Kujikata Osadamegaki*, II, Art. 4 (Rudorff, *Tokugawa Gesetzsammlung*, p. 98): "Punishment of those who send a sick traveller on from one inn to another;" and a case in Part III of this Series. 4. *Kakaye* (hold, possess)-*chi*. The exact significance of the expression is not clear. But it seems to indicate something held by the owner of a *yashiki*, and yet not a part of the *yashiki*. 5. *Ukeoi-nin*.

cultivators and others who may use the road a great deal. Where the same road serves as a branch-road[1] and a field-road, the repairs are made by the whole village.

In Ugo *kuni*, Akita *kori*, public roads are marked off into various stages, the division-point being indicated by a stone post or otherwise, and the maintenance of a given part is assigned to a given village, the expense being borne by the village as a whole. When a wayside-death occurs, the expense of examination and burial is paid by the village to which he belongs; but if he is a stranger and his home cannot be learned, then by the village where he is found.

HOKUROKUDO. In Kaga *kuni*, Ishikawa *kori*, official roads[2] and other important roads are repaired at the expense of the various *kori* through which they run, the duty being apportioned according to the assessed production of cultivated-land,[3] and labour-services being rendered upon assigned portions of the road. The cleaning of the roads falls usually on the villages individually, [each one cleaning the portion within its limits]. In Kawakita *kori*, when land is used for a road, the object being the convenience of a whole, village or a particular group of the inhabitants or even of an individual, a rent is paid by the parties benefited to the owner of the land so used, or else other land is given in compensation; repairs are made by the parties benefited or by the whole village. In Nomi *kori*, the repair and cleaning of a road are done by the owners along both sides, each side undertaking half the road; if there are houses on one side only, the house-owners take care of one half and the other falls to the feudal office or the village as a whole. Field-roads are repaired by the whole village.

In Noto *kuni*, Suzu *kori*, the repair of roads extending through the two *kori* of Hoshi and Suzu, is made by the two *kori* in common; those in one *kori* only, by that *kori* alone.

1. *Shido.* 2. *Kwan-do.* 3. *Kusa-daka*,—an unusual expression.

In Echu *kuni*, Arakawa *kori*, the repair of official roads[1] and branch roads[2] is made at the expense of the different *kori*; that of field-roads, at the expense of the village in which they are; and that of roads over the mountains or through small hamlets,[3] at the expense of the Three Provinces.[4]

In Echigo *kuni*, Kubiki *kori*, roads are repaired and cleaned by the owners on both sides, whether it be a main road[5] or a branch-road. When a wayside death occurs the rule for discharging the expense of taking charge and burying is the same. In Kambara *kori*, the width of village-roads and field roads is not fixed, but is usually about 2 feet. The repairs are usually made by the whole village. The expense of a wayside death is similarly borne, of whichever sort the road may be.

SÂNINDO. In Iwami *kuni*, Shima *kori*, roads are divided into three sorts;—"official construction roads,"[6] of which the feudal office undertakes the repairs; "official assistance roads,"[7] repaired by the people and the feudal office equally; and "self-construction roads,"[8] which the villages alone have the charge of. The cleaning of the roads falls upon the owners along each side; in towns, this is done every morning and evening; in villages, the repairing and cleaning, in the case of main roads and branch roads, either twice a year (in spring and autumn) or once a year.

SANYODO. In Suwo *kuni*, Kyuka *kori*, a main road is usually repaired by the feudal office; but branch roads, field-paths,[9] and petty ways[10] are undertaken at the village expense. When a road is bordered by houses, the owners on each side usually have its cleaning to do.

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1. *Kwan-do.* 2. *Shi-do.* 3. That is, a road passing through a deserted region but connecting centres of traffic, and therefore an important one. 4. Probably Echu, Kaga, and Echizen. 5. *Hondo.* 6. *Go-fushin-sho.* 7. *O-teate-ba.* 8. *Ji-fushin-sho.* But it is possible that these terms refer to different portions of the same line of road. 9. *Dempata-michi.* 10. *Komichi.*

NANKAIDO. In Tosa *kuni*, Kochi *kori*, the construction and repair of the roads through which the feudal lord goes biennially on his way to render service[1] at Yedo are charged upon all those who live along the road, 8 days labor [per year] being assessed for every *tan* of low land, and the owner supplying rations to the laborers at the rate of 1 *sho* 5 *go* per man per day. If these rations are not given, the same amount must be paid in taxes.

SAIKAIDO. In Chikugo *kuni*, Mitsuma *kori*, the repair of horse-roads[2] and cultivators'-roads[3] is at the expense of the block[4] or village. But ways running past residence-land are usually repaired at the expense of the owners on both sides, though others may pass over the ways.

In Satsuma *kuni*, Satsuma *kori*, erection and repair of great roads[5] and of the stone bridges along such roads are at the expense of the feudal office; while plank-bridges and bridges floored with earth are erected, owned, and maintained by the towns and villages using the branch-roads[6] which these serve.

11.—IRRIGATION.[7]

KINAI. In Yamato *kuni*, Katsurashimo *kori*, there is a village situated some 3 or 4 *ri*[8] from the river Nishijo. This village makes use of the river-water for irrigation by filling its reservoir[9] from the river in spring and autumn, when the villages further up, lying directly along the river,

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1. *Sankin* (journey-duty) *kotai* (alternation). 2. *Umairi-michi*. 3. *Kosaku-michi*. 4. *Cho*, i. e. in towns. 5. *Daido*. 6. *Waki-michi*. 7. *Yo* (use)-*sui* (water). This is a general term applied to water when used for irrigation, fires, etc, in distinction from *aku-sui*, bad or refuse water, i. e. sewage. The subject of the Section is virtually "Aqueducts" or "Irrigation," and the latter has been preferred as a title, instead of some more literal rendering, such as "Usable Waters." 8. One *ri*=2.44 miles. 9. *Tame* (collect, preserve)-*ike* (pond).

do not need it, and thus sufficient water is stored up for the remainder of the year. As a compensation they pay to the upper villages a tax for the use of the water and also are responsible for some share of the expense of repairing and cleaning the aqueducts.

In Settsu *kuni*, Higashinari *kori*, where the cultivated area is low-lying, the river is dammed, and the water led into the fields by aqueducts. In hilly regions reservoirs are constructed and are filled by rains or from springs.

TOKAIDO. In Kai *kuni*, Yamanashi *kori*, the repairing of flumes and channels is done by those who use the water; that of reservoirs and ponds by the whole village, each villager being bound to contribute one day's labor. Sometimes, however, the expense is apportioned according to the assessed amount of land, or according to the number of houses. But the repairs of the three ponds, Tokushima, Yasuzaka, and Asao are done by the water-superintendent, the expense being paid by the feudal lord. In Yatsushiro *kori*, when an aqueduct serving a village suffers injury, the owners of rice-land pay the expense of the repairs. But if the expense is too great for them alone, the owners of upland must contribute something.

In Musashi *kuni*, Toyoshima *kori*, the water is brought in to Yedo by the Kanda and the Tamagawa aqueducts, the construction and repairs being in charge of the Public Works Office. The repair of the pipes and flumes of the Main Palace, the West Palace, and the Fukiage Palace are made at the expense of the Government. The military gentry are liable for their water-taxes according to their incomes, and the townspeople according to the frontage of the houses, the payments being made to the Public Works Office.

TOSANDO. In Shinano *kuni*, Takai *kori*, an association[1] of persons sometimes undertakes the repair of the head[2] of

1. *Kumiai*. 2. *Bunsui* (dividing the water)-*kuchi* (mouth, source).

the aqueduct system, the villages taking charge of the aqueducts in their lower length. Where a village or a set of persons makes use of water from a source owned by a different village or set of persons, the former takes no part in the management of the upper part of the system. In Minochi *kori*, river and aqueduct water is invariably regarded as the property of the whole village or of an association, and no individual may own it exclusively. The villagers, when repairs are ordered by the village officers, must render labor-services for that purpose. When an aqueduct serves several villages, A, for instance, using 1 part of the water, B 5 parts, and C 6 parts, A is not liable for any share in the expenses, B and C bearing them all. Various other arrangements exist for sharing the expenses, depending on the circumstances.

In Rikuzen *kuni*, Toda *kori*, at ordinary seasons, there are no special regulations as to the use of water. But in time of drought the water is usually obtained from some large river, the quantity [admitted to each aqueduct] being proportionate to the extent of land [served by it]. For example, if there are [on the line of the aqueduct] 10 villages, each assessed at 1000 *koku*, sufficient water is taken for land of 10,000 *koku*, the water passing down through the upper to the lower villages. If the land is so situated that it is impossible to lead the water successively from high land to low land, then it is let on for one region one day and for another the next day, the two regions alternating in the use. This is termed "watch water."[1] The same arrangement obtains for distributing among individuals the water of aquenducts belonging to a single village. The construction

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The idea is that the system of distribution began at a certain point, perhaps a dam or pond, whence the various aqueducts branched off, and where the flow was regulated by the managers of the system.

1. *Ban-mizu*. See Iwami *kuni*, *infra*.

and repair of the distributing-head[1] is at the charge of the feudal lord; that of the aqueducts, at the charge of the villages using them. Reservoirs are for the most part the property of the feudal lord, but sometimes of a village or of [an association of] 5 or 6 individuals. The repairs are always made by the owner; so that if a person has a reservoir on his own land, he repairs it himself and has the sole right to use it.

In Uzen *kuni*, Okitama *kori*, irrigation water is led directly from a river. The breadth of the [main] aqueduct is usnally 5 *ken*[2] and 5 feet, and the repairs are made by those whom it serves. Where it is a branch, serving only a special group of persons, its width is less than this.

In Ugo *kuni*, Hiraga *kori*, it is customary for 5 or 10 villages to form an association and have a common aqueduct system. The repairs and cleaning of channels and flumes are done at the common expense. One of the villages (termed "parent village"[3]) manages the distribution of the water from the head and regulates its use. When land is taken for aqueduct purposes, the owner is not given any compensation but is simply excused from the taxes of the area taken. Where a reservoir lying in village A and owned by the village is used by village B only, village A may not shut off the water so as to prevent its use by village B; but the latter must undertake the repair and cleaning of the channels and flumes. The rule is the same where A and B are individuals.

HOKUROKUDO. In Kaga *kuni*, Ishikawa *kori*, when village A constructs an aqueduct through land belonging to village B, the farmer must pay to the latter a sum (termed "aqueduct-rent") equal to the produce and rice-taxes[4] upon

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1. *Uchi* (within, at)-*kawa* (river)-*kuchi*. That is, the point on the river whence the water was sent in various directions through the aqueducts. 2. One *ken*=about 6 feet. 3. *Oya-sato*. 4. *Nengu-sakutoku*. "Rice-taxes" may be an error for "labor-services," for the rice-pro-

the land thus taken. In Yenuma *kori*, when one village leads water over its land from an aqueduct, the villages lying lower down have a right to use the water flowing off, but must also pay some part of the expense of repairs. The rate is usually 80 days' labor for every 100 *koku* of assessed production, but may be more than this in time of drought, if more labor is needed.

In Noto *kuni*, Suzu *kori*, where on aqueduct is planned by one village and others below it are in need of water, the former may not construct the aqueduct as it pleases, and it usually undertakes to make it of a certain width and depth.

In Echu *kuni*, Imizu *kori*, when one village owns a pond whence several other villages obtain water, they pay a rent for it, as well as the cost of repairs, the assessment being apportioned according to the amount of land owned by each village.

SANINDO. In Iwami *kuni*, Shima *kori*, wells are relied on for drinking-water, and irrigation-water is obtained by aqueducts from a reservoir or from a dam on a river. Dams are of three sorts, according as they are contructed and repaired by the feudal lord, by a village with the assistance of the lord, or entirely by a village. In a time of drought the water is taken by different districts in turn, and good and true men are chosen to watch that the distribution of the water is properly made; so the term "watch-water"[1] is used.

In Idzumo *kuni*, Kamikado *kori*, there are two rivers, the Hi, running from Hashido village in Nita *kori*, to Kamisato village in Kamikado *kori*, and the Hii, running from Kamisato village to Kamidate village in the same *kori*. From these rivers comes the water used by the *kori* of

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duce would include the rice-tax; but more probably the explanation is that "produce" means the net profits after paying out the rice-tax.

1. *Ban-sui*.

Kamikado, Tatenui, and Idzumo. In the village of Ishizuka, which is conveniently situated for managing the distribution of the water, the head of the aqueduct-system is made, and the people of this village take charge of the distribution of the water to the three *kori*. The repairs and cleaning of channels and flumes are done at the expense of the three *kori*. In Nomi *kori*, the maintenance of river banks and aqueducts and the cleaning of rivers used for irrigation purposes are done at the expense of the feudal office.

SANYODO. In Mimasaka *kuni*, Katsunami *kori*, as disputes are liable to arise in regard to the distribution of water, a water-watch[1] is appointed at the expense of the village, to regulate the distribution fairly. Thus those only who share in the expense[2] of the watch may use the water, even during a drought. The same persons also pay the expense of repairs.

In Suwo *kuni*, Yoshihiki *kori*, [in one region] there are 48 small ways[3] leading from a place called Yamaguchi,[4] and along each one passes a flume. At that point in a place called Kimachi, lives a keeper whose duty it is to regulate the supply. If, for example, a fire occurs in a certain village, the water is turned on for that village. The repair and cleaning of flumes and embankments are made by those who are served by them. In [other] villages water is obtained from a river or a reservoir, the repair and cleaning being done half by the people, half by the feudal lord. At a time of draught, a water-watch is sometimes appointed to regulate the distribution of the water. But sometimes the distribution is effected by a method of alternation, the water being turned on to one plot today, another to-morrow and so on. There is still a third method, in which they use what is known as "divide-

1. *Mizu-ban*. 2. That is, the people of that village only. 3. *Komichi*. 4. Probably, as the name implies, at the foot of a mountain.

timber."[1] A hole of from 1 to 10 inches in diameter is made in a plank, and the water is let out according to the area of the plot to be served. For example, if the plot is 1 *tan* in area, a 1-inch aperture is used; 2 *tan* in area, a 2-inch aperture; and so on.[2] Still another plan is to choose from the villagers good and true men to manage the distribution and determine which plots most need the water, without regard to whether they are large or small, on high land or on low land. This method is regarded as the best. It sometimes happens that a villager manages surreptitiously to turn the water into his plot when he is not entitled to. When this is discovered, the water-watchmen repair to his house, and taking away one of his kettles, they put it in pawn, and spend the money in a wine-bout. This has been since old times the customary punishment for a water-thief.

NANKAIDO. In Awaji *kuni*, Tsuna *kori*, when those who live along the upper part of an aqueduct wish to make a new dam, they must first consult and obtain the consent of the owners below them.

SAIKAIDO. In Higo *kuni*, Aso *kori*, the local officers execute all undertakings connected with the construction and repair of aqueducts, working under the orders of the Embankment Bureau and Aqueduct Bureau of the feudal office.

In Osumi *kuni*, Gora *kori*, the construction and repair of aqueducts are done at the expense of the feudal office [and by its direction], only matters relating to the distribution being in the hands of the local officers; while a "labor-official"[3] superintends performance of the works undertaken.

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1. *Bun-ki*. This seems to mean "plank;" and yet it may be that the *bun* refers to the distribution of the water. 2. It is probable that planks having the proper aperture were placed at each of the openings leading from the main canals to the different plots. 3. *Chikara-kayu*.

12.—RIVERS.

TOKAIDO. In Musashi *kuni*, Toyoshima *kori*, in towns, rivers are cleaned by the feudal office. Those along the banks who use the water for manufacturing purposes must pay to the feudal office a sum of money under the name of "thank-money"[1] or "additional money."[2] Bridges are built by associations[3] of military gentry and townspeople. Those who have stone-embankments, small bridges, and landing-places, are obliged to pay dues and to refrain from obstructing the flow of water or the passage of boats.

TOSANDO. In Uzen *kuni*, Okitama *kori*, [in towns], the Matsu river, small at ordinary times, rises very suddenly in rainy weather and becomes some 1,000 yards wide, so that the expense of repairing the banks is divided among the houses in an area of 16 wards. The assessment in former times was made, not according to the number of houses, but according to the extent of one's residence-land, the unit being a plot 6 *ken* square. The source of the river is regarded as a part of the river, even in the dry season, and not the property of any individual or any ward.

HOKUROKUDO. In Kaga *kuni*, Ishikawa *kori*, the right of fishing belongs to the village occupying the banks, though the right is sometimes sub-let. A tax (known as "river-services") must be paid for the right to fish; and hence those paying the tax are entitled to exclude others. In Kaga *kori*, there is an old feudal law against changing the bed of the river temporarily for the purpose of obtaining fish. Another method of fishing, known as "pond-clearing" requires the closing of the aqueduct or river by a dam; but this is not permitted before the 210th day.[4]

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1. *Myoga-kin.* 2. *Sashikuwai-kin.* 3. *Kumiai.* 4. A day indicating a stage in the ripening of rice when it is almost ready for the sickle. Presumably the water was needed for irrigation until this time and was therefore not to be interfered with.

In Sehigo *kuni*, Tsumma *kori*, river banks are maintained at the joint expense of the feudal lord and the people. In Kamikura *kori*, rivers run up and down or across a town are called "navigable," and are used for freighting and for extinguishing fires. The drain-water and rubbish of the town are removed by the river, and so there is a cleaning, once a year, at the expense of the town.

SANYODO. In Idzumo *kuni*, Takata *kori*, there runs through the province a large river, the Kanogawa. No clear distinction exists as to the respective duties of feudal lord and villagers in regard to repairs of the river banks, for private lands and demesne lands are intermixed in a very confused manner, and the proceedings are different for the two kinds of land.

SANYODO. In Suwo *kuni*, Yoshihiki *kori*, repairs of river-banks, etc., are made by the villages on either side, each village repairing its own side up to the middle line of the river. But the right of fishing belongs exclusively to one or the other side of the river; and so the taxes (known as "salmon river-service rice"[1] or "whitefish river-service-rice"[2]) are paid by that side only, the rate being 10 *momme* for each *koku* of the assessment of the river-property. Where the river changes its channel, the new channel is cleaned out only in that portion used by boats, the work being done by the boatmen, and the expense being paid by the feudal office. But where the sum so advanced is not enough, the riparian owners must supply the deficit.

1. *Ai kawa yaku-koku.* 2. *Shirauwo-kawa yaku-koku.*

CHAPTER III.

SUCCESSION[1] TO FAMILY PROPERTY.[2]

1.—PETITIONS AND REPORTS.

When a person succeeds to the headship[3] of the family, he exchanges his own second name for the usual second name (called the "public name"[4]) of the master of that family; so that nore-registration in the land-register is needed; but the age of the successor is recorded and the name of the retiring father is re-entered in the temple-register.[5] The successor usually employs as his principal seal[6] that used by his predecessors, esteeming the possession of it an honor.

The more or less varying customs in different districts are as follows.

KINAI. In Yamashiro *kuni*, Kadono and Atago *kori*, in villages, no special report is made to the authorities by the successor; but he adopts the family cognomen, and at the

1. *Sozoku.* 2. *Ka-san.* 3. *Katoku.* 4. *Kogi-na.* This will hereafter be termed "family cognomen." 5. *Shumon* (religious sect) *nin-betsu-cho* (record of persons). This was because the name of the head of the family stood at the head of the list of family members, and also because, as appears below, the retiring head usually changed his second name. 6. *Jitsu-in*, used for formal acts of legal importance.

time of receiving the temple register reports that he will continue to use the ancestral seal. But in towns a report must always be made, and the successor, accompanied by the ward officers, presents himself at the office of the town-magistrate, with a deed of grant of the real property, and has it indorsed. In general the male heir-apparent, when he reaches the age of 17, goes through the form of "hat-donning," some person, at his request, acting as "hat-father." After this time he is entitled to take part in the affairs of the ward or village. But second and other sons are called "room-dwellers"[2] and do not go through this form.

In Idzumi *kuni*, Otori *kori*, a son or younger brother, who has succeeded to the estate[3] of his father or brother reports the fact to the ward-elder, who reports to the chief elder. A deed of transfer, countersealed by the relatives of the successor, the company, and the ward-officials, is then filed, and the successor's name is substituted in the land register.

In Settsu *kuni*, Nishinari *kori*, a notice is given to the ward officers, and the successor's name is substituted in the land-register. But this procedure is not needed in the case of other than house-owners.[4]

TOKAIDO. In Suruga *kuni*, Abe and Udo *kori*, when one succeeds to a family name,[5] he reports the fact at the local office and assumes the family cognomen, not changing the ancestral seal; some persons do not adopt the family cognomen, yet leave the entry of name in the land-register unchanged. In Shida and Mashizu *kori*, no report of a succession is made. But the local officials, when the master of a family reaches the age of 60, take his name from the beginning of the family list in the temple-register and place it at

1. *Yeboshi* is an old-fashioned hat worn on formal occasions, but only by adults. 2. I.e. take no part in the outside affairs of the place. 3. *Iseki* (estate of a deceased person)-*cho*. 4. *Iyemochi*. 5. *Kamei*.

the end; so that a man of that age goes into retirement as of course. The same seal is used for many generations.

In Sagami *kuni*, Kamakura *kori*, when the eldest son[1] marries, he thereupon becomes the successor, and takes the family cognomen, reporting the fact to the local office.

In Musashi *kuni*, Toyoshima *kori*, the custom is, ever since the period Kwansei (1789-1801), for every succession to landed property to be publicly announced in the streets by the feudal governor, and for the name to be changed in the title-deeds. If a deceased head of a family left no male issue, the property is managed by the widow or a daughter, and it is afterwards transferred into the name of the person who joins the family as husband of one of its female members. If any causeless delay occurs in fixing upon such a person, the local officials may interfere and urge the widow or daughter to do so. When a person during his lifetime names another as his successor, it is an old rule of the town magistrate's office that a note ought to be made in the register of succession.[2] This was again prescribed by a proclamation in the 6th year of Kyoho (1721); but it has been but little observed since that period.

In Kai *kuni*, Yamanashi *kori*, when the succession to the headship occurs, the relations and company have a meeting for the purpose, and send to the ward-headman a verbal notice of the succession.[2] In Koma *kori*, in case the successor is a son by nativity[3] and not a son or son-in-law[4] by adoption, no notice to the authorities is necessary.

TOSANDO. In Omi *kuni*, Shiga *kori*, no report is made. In Inugami *kori*, when a succession[2] occurs, the usual record is made at the time of the revision of the temple-register, the change being called "one family change."

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1. *Cho-shi*. 2. *Dai-kaye* (lit. generation-change). 3. *Jitsu-shi*. 4. *Muko-yoshi*,—adopted for the purpose of marrying a daughter of the family. Such a person takes the name of the family into which he marries.

In Mino *kuni*, Kiso *kori*, when a succession occurs, a report is made to the local office and the change of ownership of real property is noted in the land-register, the name being also changed in the temple-register after 100 days have elapsed.

In Shinano *kuni*, Saku *kori*, when a family-master dies or retires, notice is given to the village officers, and the successor takes the family cognomen. In Ogasa *kori*, a similar notice is given. In Hara *kori*, when a family-master dies or retires, a petition, countersigned by the company, and requesting the succession, is filed by the eldest son, through the headman of the ward, at the ward-office, and after permission is received, a public announcement is made.

In Shimotsuke *kuni*, Tsuruga *kori*, the successor reports to the local office, deposits a facsimile of his seal, and adopts the family cognomen.

In Iwaki *kuni*, Shirakawa *kori*, the successor, who is called "chief sealer,"[2] reports to the local officials, who at the time of the revision of the temple-registers transmit all such reports to the feudal official for record. The change is also made in the village tax-register, at the end of the year, when the taxes are paid.

In Iwashiro *kuni*, Shinobu *kori*, the successor's report is made as in the previous instance. The family cognomen is adopted, so that no change in the land-register is needed. In Aidzu *kori*, retirement is not practised among the common people. A successor reports to the local officials, who make the proper corrections in all the books.

In Rikuzen *kuni*, Miyagi *kori*, in towns, a report in writing, signed by the retiring person, the successor, and one of the company, is presented to the headman. If the succession be permitted by him, the property standing in

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1. *Nimbetsu-cho.* 2. *Han-gashira*,—because his seal heads the list in his family.

the land-register[1] in the name of the transferor is placed in the name of the transferee. The headman then orally informs the town magistrate, who corrects the land-register at his office.

In Rikuchu *kuni*, Isawa *kori*, the successor adopts the family cognomen. He must report to the local officials, if he is a son by adoption, but not if a son by nativity. In Iwate *kori*, retirement is not in name practised among the common people. No special report is made of a succession; and usually no change in the land-register is made, as the successor adopts the family cognomen.

In Mutsu *kuni*, Tsugaru *kori*, retirement is not known. The successor to a deceased person adopts the cognomen.

In Uzen *kuni*, Okitama *kori*, all successions must be reported orally to the company-chief, immediately, in case of a retirement, and within 50 days, in case of a death; and the latter reports to the bailiff,[2] who makes an official record. The fact must also be reported in writing, attested by the ward-chief, to the superintendent of sects,[3] on the 10th day of the 2nd month, when the annual revision of the temple-register is made. In Murayama *kori*, a report is made only when the successor is an adopted son. The family cognomen is adopted, and thus no change in the ownership as recorded in the land-register is necessary. In Tagawa *kori*, the successor affixes his seal in the family-register[4] at the local office; the ward or village officials then report at the annual revision of the temple-register in the 6th month.

In Ugo *kuni*, Akita *kori*, no petition or report is necessary, for as retirement during lifetime is not the custom here, and as the elder son succeeds as of course, a mere notice of the death is sufficient. The headman makes a note in the

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1. *Ken-cho* or *noki-cho*,—stated in a note to have been similar to the *mizucho* but distinct from it, a separate *kencho* being kept in every *cho* or block. 2. *Kendan*. 3. *Shumon-bugyo*. 4. *Koseki-cho*.

family register at the time of revision. The family-master has in most families borne the same cognomen for generations, and thus the successor takes the name of his father.

HOKKAIDO. In Oshima *kuni*, Kamedo *kori*, the report of a succession is made at the local office.

HOKUROKUDO. In Echizen *kuni*, Tsuruga *kori*, a successor is obliged to adopt the family cognomen. The retiring master changes his name; but as he is entered in the temple-register merely as "the father," no report is ever made to the village office.

In Kaga *kuni*, Ishikawa *kori*, [in towns] when the headship is transferred in the lifetime of the master, the grantor and the heir appear at the ward-assembly office, with an instrument signed by both, and the entry in the family-register is then changed. But a farmer is not permitted to distribute his property among his children during his lifetime. The successor to a farmer is obliged to take the same family cognomen as the previous family-master. In Yenuma *kori*, the will[1] of a deceased person is taken to the feudal office, together with a petition signed by the successor, relatives, and company (the occasion is called "opening the will," and the proper time is the 7th day after the master's death), and the succession is confirmed.

In Noto *kuni*, Hagui *kori*, the successor adopts the family cognonen. Only the fact of the death is reported to the feudal official, as the eldest son succeeds as of course.

In Echigo *kuni*, Kubiki *kori*, no petition or report is made by the successor; but the name of the new master is substituted at the revision of the family register. But when retirement occurs, the successor gives verbal notice to the headman.

SANINDO. In Tango *kuni*, Yosa *kori*, on the death of the master the local officials, without waiting for a report, substitute the name of the eldest son as master, but if it is

1. *Yuigon.*

a case of retirement only, they wait for a report. When the successor changes his name, it is customary for him to report to the officials.

In Inaba *kuni*, Omi *kori*, the successor is not obliged to report until the time of revising the temple-register, when the local officials substitute his name as head. In towns the succession—which they call "change of master"[1]—must always be reported.

In Idzumo *kuni*, Shimane *kori*, on the death or retirement of a family-master, an instrument certifying to the succession, sealed by the relatives and company, is sent to the town-magistrate, and the chief inspector[2] and ward-elder make a note in their registers (the family-register and the land-register), the name of the heir being substituted as family-master. In Soyegami *kori*, notice is given to the chief elder through the ward-elder, and the change is made in the temple-register, the chief elder affixing his official seal.

In Iwami *kuni*, Naka *kori*, notice of a succession is given, in villages, to the headman, in towns, to the elder, whether the heir is son by nativity or by adoption. But the notice is not made until the time of the revision of the temple-register,[3] in the 2nd month of every year, and then only by the new master himself.

SANYODO. In Harima *kuni*, Shikito *kori*, permission of the feudal official must be obtained for a family-succession.[4] If a new seal is adopted, a facsimile of it must be deposited; but not if the use of the ancestral one is continued.

In Mimasaka *kuni*, Nishihojo *kori*, notice of succession is given to the chief elder, through the ward-elder, in case of retirement, but in case of a death, only notice of the fact of death is given [by the successor], as it is assumed that the eldest son has succeeded.

In Bizen *kuni*, Mino *kori*, there are no other proceedings than a notice to the ward-elder, who makes a note in his register.

1. *Teishu-kaye.* 2. *O-mokudai.* 3. *Nimbetsu-cho.* 4. *Iye-sozoku.*

In Bigo *kuni*, Mitsuki *kori*, no special report of a succession is made, the matter being decided by a family consultation. The family cognomen remains the same for hundreds of years, and the entries in the land-register are left as they are.

In Aki *kuni*, Numata and Aki *kori*, a succession to village property is usually not reported until the next revision to the temple-register. In towns it is necessary for the successor to appear at the magistrate's office and stamp his seal in the register, the proceeding being called "book-changing."

In Suwo *kuni*, Yoshihiki *kori*, notice is given, in towns, to the elder, in villages, to the watch-chief.

In Nagato *kuni*, Toyoda *kori*, when among the upper classes[1] (known here as *memi*), that is, those who may have a family name and wear two swords, a succession occurs, notice is given to the proper official; [such an arrangement] is known as "direct-control."[2]

NANKAIDO. In Kii *kuni*, Nakusa and Abe *kori*, in villages, no special report is made, but the entry of the name of the family-master is changed at the revision of the temple-register. In towns, a succession to realty requires the permission of the feudal official. Where the inheritance is granted by one retiring,[3] a petition by the retiring master is enough; but where the grant is by one deceased,[4] there must be a witnessed document of grant, and a petition must be filed within 50 days after the decease, the entry in the land-register being thereupon changed. Any necessary delay must be explained beforehand.

In Iyo *kuni*, Uwa *kori*, in villages, a succession is reported at the local office and the name changed at the time of revising the temple-register. In towns, a petition

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1. *Jō-tō*. 2. *Jiki-shihai*. This is a technical phrase, as ordinarily used, signifying the official just above any given official (see Part III, No. 12). But here the meaning is not clear. 3. *Inkyo yuzuri*. 4. *Shikyo-yuzuri*.

countersealed by the successor's company must be filed, and a letter of permission obtained from the magistrate.

In Tosa *kuni*, Ogawa *kori*, the common people, in case of a succession, merely notify the local officials; this is called "name-changing."[1] The country-*samurai*[2] petition the feudal official to allow the desired succession, and moreover are allowed (as the commoners are not) to retire during lifetime, and to transfer the family-pedigree.[3] These country-samurai are those who have reclaimed waste land (the area must be 3 *cho* or more) and are permitted to enjoy the profits without paying taxes or other charges.[4]

SAIKAIDO. In Chikugo *kuni*, Mii *kori*, notice of a succession is given to the company-chief, inspector,[5] and ward-elder, and the successor's name is substituted in the register.

In Buzen *kuni*, Shimoge *kori*, when a master over 60 years of age refuses to go through the form of "picture-trampling,"[6] the local officials treat him as having retired, and alter the name in the registers. A new master does not adopt the family cognomen until the death of the retired master.

In Bugo *kuni*, Oita *kori*, retirement is not practised. On the death of the master of a family, the family cognomen is adopted by the eldest son, if the local officials so decide. In Hayami *kori*, a succession must be followed by a report and a change of name in the books. The principal seal must be changed; and if time is required for this, the successor reports that he will temporarily use that of his predecessor.

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1. *Namaye* (name)-*tsuke* (fix)-*kaye* (change). 2. *Go-shi*. 3. *Kabu*. This seems here the significance of this protean name. 4. See the paper by Mr. Grinnan, on "Feudal Land Tenure in Tosa," in Trans. Asiat. Soc. Jap., 1892. 5. *Metsuke*. 6. *Fumiye*,—a reference to the trampling upon a picture of Jesus which was periodically required as a test of non-Christianity.

TOSANDO. In Omi *kuni*, Shiga *kori*, the person who can show a deed of grant[1] becomes the successor. In villages, when the eldest son reaches the age of 16, he calls together the oldest people of the village,[2] goes through the ceremony of donning men's clothes,[3] and gives up his boy's name.[4] This occasion is called "hat-donning," and determines his right as heir-apparent.

In Shinano *kuni*, Ogata *kori*, it is the custom, in order to avoid disputes as to the succession, that every farmer (whether youthful or aged) shall in a dangerous illness name his successor in a writing attested by the headman and company-chief; and when this duty is neglected, the headman, company-chief, company, and relatives urge him to fulfil it. If after all a person die intestate his property is inventoried in a book, which is given into the custody of some relative until a successor is chosen. A will unattested is invalid. In Takai *kori*, custom requires that the succession to the family estate and the mode of distribution of personal estate shall be provided for before death in a writing sealed by the headman and company-chief. No claim to the property can be brought unless thus certified in writing. In Saku *kori*, the eldest son[5] generally is regarded as having the right of succession. But if the father has reason to fear to trust the management of the family property to him, he may make the second or third son the heir, establishing the eldest in a branch family and apportioning to him a larger share than would have fallen to a younger son in such circumstances. In Minochi *kori*, among *samurai*, an illegitimate son[6] cannot succeed, unless he has been acknowledged by petition to the feudal office and legitimized[7] by its approval. Moreover, an illegitimate son, even though older than the other children, must call

1. *Yuzuri-jo.* 2. Thus invoking for himself a life as long as theirs. 3. *Gembuku.* 4. *Yomei.* 5. *Chonan.* 6. *Mekakebara no danshi* (lit., concubine's son). 7. *Chakushi.*

them "elder brother"[1] or "elder sister"[2] and be termed a younger son,[3] until he is legitimized as above.

In Shimotsuke *kuni*, Kawachi *kori*, if the eldest child is a daughter, a husband is found for her and he succeeds to the headship; for if a son were allowed to succeed in her stead, the labor available for cultivation of the family land would be diminished.[4]

In Uzen *kuni*, Tagawa *kori*, a similar custom prevails. In Okitama *kori*, the eldest legitimate son[5] has the right of succession, and if he dies, the right passes to the legitimate grandson.[6] If, however, the grandson is too young to manage the property, one of the grandparents or great-grandparents assumes the succession temporarily, the grandson being adopted as a son by that person. In case of retirement during lifetime, the heir does not receive the entire patrimony, a part being reserved as a retirement-portion.[7] But on the father's death, this too passes to the successor. The name "key-grant"[8] is given to this custom.

In Rikuzen *kuni*, Miyagi *kori*, the right of succession belongs to males[9] only; thus if the eldest child is a female,[10] the next male child succeeds; or if the eldest son dies and the second child is a daughter and the third a son, the latter succeeds. But if the eldest son leaves a son, a brother[1] or [married][11] sister takes the succession temporarily, the grandson becoming the adopted son; this arrangement is known as "adoption in the line."[12]

In Ugo *kuni*, Akita *kori*, the eldest son customarily succeeds. But if he is too young to manage the property, and the second child is a daughter, her husband (the

1. *Ani*. 2. *Ane*. 3. *Nisannan*. 4. By the death or retirement of the father, leaving none in his place. 5. *Chakunan*. 6. *Chakuson*, i.e. the son of the one who would have succeeded. 7. *Inkyo-ryo*. 8. *Kagi-yuzuri*: the allusion is obscure. 9. *Danshi*. 10. *Joshi*. 11. See the next paragraph. 12. *Jun* (order, line)-*yoshi* (adoption), i. e. adoption of one standing in the original line.

adopted son-in-law) takes the succession temporarily, adopting the grandson as his heir. The daughter's child has in such a case no right of succession.

HOKUROKUDO. In Kaga *kuni*, Ishikawa *kori*, succession may occur during lifetime, as already described. But it is more customary for the master of a family to make his will and put it in the keeping of his company; so that when a death occurs, the successor is required to make his will and deposit it with the company, who thereupon deliver up to him the will of his predecessor. When a succession af death occurs, the will of the deceased is opened in the presence of the headman, the relatives and the company, the occasion being known as "will-opening."[1] If the headman considers any part unjust, he refers it to the magistrate for decision. It is the custom for the successor to adopt the family cognomen of his predecessor; and ordinarily the eldest son, with the approval of the relatives, merely changes his name and becomes family-master. But it on account of physical defects or other reasons the eldest son is unfit or if no son survives, a brother or other near relative is appointed by agreement of all the relatives.[2] In Nomi *kuni*, a person may, on account of the infancy of his eldest son, nominate his wife as successor, duly informing his relatives and company of his determination, but the widow must procure the sanction of the magistrate to her succession. The succession is always determined at the pleasure of the testator. In Kawakita *kori*, when the master of a family dies, and the widow marries again (this is termed "succession by going as a husband,"[3]) the children by the first husband are regarded as the sons by nativity of the second, and the eldest son becomes the latter's heir, taking precedence of the children by the second marriage.

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1. *Yuigon-hiraki.* 2. The above paragraph is in the original a tangle of inconsistent and obscure statements, and it has been impossible to interpret them clearly. 3. *Iri-muko-sozoku.*

In Noto *kuni*, Hagui *kori*, the eldest son succeeds as of course, if the will contains nothing to the contrary, even though he be an incapable. If no son is living, the council of relatives appoints a successor and reports the name to the magistrate. In Hoshi *kori*, the permission of the feudal official is necessary in order that one may give the eldest son in adoption to another family and make a younger son the successor. When the widow of a man dying without issue endeavors to obtain the succession by taking another husband, she must file with the feudal official a petition signed by herself and all relatives not beyond the degree of cousin.

In Echū *kuni*, Imizu *kori*, the master of a family makes his will betimes, seals it up, and deposits it at the ward office. After his death the will is opened in the presence of his relatives and company and the ward officers, and the appointee is made successor. If no successor has been nominated or no will has been made, a council of relatives appoints a successor. But the general custom is for the eldest legitimate son[1] to be appointed heir, and if he is dead, his son[2] ranks next. If no legitimate son[3] survives, the succession may go to an illegitimate son.[4] In Tonami *kori*, the will is made betimes, in towns, by the family-master (perhaps appointing a daughter), sealed up, attested on the outside by the company, and deposited with the company-chief. A council of relatives is held on the 7th or 14th day after the decease, and the question is put as to whether the eldest son shall succeed. If the decision is in the affirmative the appointment in the will does not stand; if in the negative, the will is opened, in the presence of relatives and company, and the appointee becomes successor. The company-chief then informs the town magistrate. But in villages the succession can never go to a daughter.

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1. *Chaku-cho.* 2. *Chaku-son.* 3. *Seike.* 4. *Junke.*

[illegible]

[illegible]

[illegible]

[illegible]

In Idzumi kori, Osumi kori, when a distribution is about to be made to a daughter or younger son, the father makes out an instrument attested by witnesses and deposits it with the village officials; on the father's death, the relatives open it and read it aloud. A similar document is necessary for the appointment of the heir. In Idzumi *kori*, when a second or third son establishes a branch-family, he is sometimes exempted from village charges or feudal labouring services for 3 years. This period is called the "new walls three years."[4]

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1. *Hakatan.* 2. *Dai toku.* 3. *Ichi-hyakusho.* 4. *Ara-kabe sannen,* the purpose being to allow him to devote his funds to erecting a house.

In Settsu *kuni*, Yabe *kori*, the establishment of a new family is reported to the local officials. The portion given is of no fixed amount, this being in the discretion of the master of the family. The same rule holds when a merchant apportions to some one of his clerks or agents who has well served him for many years a part of his capital and of the goodwill[1] of the house, for the purpose of enabling him to set up a separate house.

TOKAIDO. In Ise *kuni*, Ano *kori*, no report is made of the creation of a new family; but a note is made of the additional family[2] in the temple-register. A poor family sometimes petitions the feudal official for money to build a house and buy farming tools, and receives assistance[3]-money. There is no fixed rule as to the amount of an advancement.

In Shima *kuni*, Toshi *kori*, a report must be made to the feudal official, because an increase takes place in the number of houses. There is no regular amount for the advancement. In most cases the new family is established in the same calling as the main family. In sea-coast villages the portion often consists in a boat, with which the new family carries on the occupation of fishing.

In Owari *kuni*, Aichi *kori*, there is no fixed rule as to the amount of capital portioned out. When an eldest son starts a new family, his portion is sometimes contributed to by the younger son, who succeeds to the headship of the main family. Sometimes a merchant portions out to some one of his clerks or agents who has well served him for many years a part of his capital and of the goodwill of the

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1. *Noren*. This is a curtain separating the shop-room of a merchant's house from the living rooms. By custom it is regarded as representing the house or firm, and thus it has come to have the meaning "good-will." 2. *Kado* (gate,—hence, house)-*mashi* (increase). 3. *Te-ate*, lit. hand-placing, the attitude of one who lays his hand on another's shoulder and offers friendly help.

house, together with the right to use the house-name,[1] and into him establish a separate house. In such a case, if the beneficiary should subsequently injure the interests of the original house in a commercial transaction, the head of the latter may deprive him of the right to the house name and goodwill and order him to cease trading.

In *Fukami kuni, Fuchi kori*, the fixed amount for an advancement of equity or personality is three-tenths of the total value of the family estate; this amount is known as "seven and three parts."[2] If the amount exceeds this proportion, the relatives and the company may object. In the number of houses in each village is fixed, one cannot start a new family at pleasure, and usually one must wait until a piece of residence-land is vacated by its occupant. Even if an additional house is built, no report is made.

In *Suruga kuni*, Abe and Udo *kori*, a report must be made to the headman, and during the building of the new house one's company must contribute their assistance without pay.

In Kai *kuni*, Yamanashi *kori*, the gift of property to other than one's successor (for example, a younger child or friend) must be made by an instrument of bequest.[3]

In Idzu *kuni*, Takata *kori*, a part of the estate is sometimes apportioned to a son or brother to establish him at the head of a branch family, the amount given being in the discretion of the master; some do not give any of the cultivated land, but a portion of the residence-land is always given.

In Musashi *kuni*, Toyoshima *kori*, a will is usually made during the father's lifetime, giving a portion of the estate to a daughter or younger son. On his death, the will is opened and the portion set off. When the daughter marries or the son grows up [and starts a branch family],

1. *Yago*. Most commercial establishments have a title of their own, quite distinct from the name of the owner or owners, i.e., *Ise-ya*, *Owari-ya*. 2. *Shichi bu san-bu*. 3. *Yuijo*.

the portion is taken to the new house.[1] If there is no such distribution by will, there is no division of the estate, because a division would be the source of wrangling among the children.

In Iruma *kori*, an apportionment to a second or third son is by law not permitted, unless the family estate is assessed at 10 *koku*, or more. When a branch family is started, the feudal official makes a present by way of reward. In towns, the master portions out a part of the capital to the son or brother, who hires a separate house. No report is made.

In Awa *kuni*, Awa and Heguri *kori*, the farmers dislike to own descent from a new family, and so the brothers and younger sons do not start new families but take the succession of a family about to become extinct.[2] The amount apportioned depends on the discretion of the master.

In Kadzusa *kuni*, Moda *kori*, in towns, a report is made and the entry is changed in the land-register. But in villages the practice is to take the succession of other families, as just related. The amount of the apportionment is not fixed.

In Shimosa *kuni*, Imba *kori*, apportionment is by law not permitted if the family estate is assessed at less than 10 *koku*. The amount is in the discretion of the master. But as permission to turn cultivated land into residence-land is difficult to obtain, the custom is to re-establish extinct families, as above related.

In Hitachi *kuni*, Ibaraki *kori*, permission of the feudal official must be obtained, because in making the advancement a portion of cultivated land is turned into residence-land. Whenever an additional house is established, the feudal official gives a present by way of reward. The amount apportioned is in the master's discretion.

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1. *Igon*. This expression is used apparently because the portion would consist chiefly of personalty. 2. *Zekke*, i.e. having no male issue.

TOSANDO. In Omi *kuni*, Shiga *kori*, the amount apportioned is in the master's discretion. Where it consists of realty, a deed of grant must be given. In villages, an apportionment is not allowed where the family estate is assessed at not more than 10 *koku*.

In Hida *kuni*, Ono *kori*, permission of the feudal official must be procured. The portion is customarily not less than 10 *koku* in assessed production and 1 *cho* in area, and the main estate remaining must not be less in quantity. If the head of the new family does receive a plot of less than 10 *koku* production, he loses the title of "farmer" and the family is called "nobody's family;"[1] moreover, his rights among his fellow-villagers suffer considerable diminution.

In Shinano *kuni*, Sarashina *kori*, when a will is made, and its provisions are ambiguous or the distribution is unjust, the relatives and company have a right to disregard it and make a proper distribution. In Takai *kori*, headmen whose property is of less than 20 *koku* assessment and ordinary farmer's whose property is less than 10 *koku* are forbidden by law to set off part of their property to second or third sons.

In Kotsuke *kuni*, Ibaraki *kori*, an apportionment is forbidden unless the family estate has an assessed production of 15 *koku* or more. The amount of the portion is determined by a consultation of the relatives. The entry of the fact is made at the time of the next revision of the temple-register.

In Shimotsuke *kuni*, Tsuruga *kori*, the practice of advancements for the establishment of branch families is rare; in most cases the second and third sons take the succession of a "broken" family.[2] In Kawachi *kori*, if the family estate is assessed at 10 *koku* or less, an apportionment cannot be made without permission of the feudal official. The amount is in the discretion of the master. A report must be made at the local office.

1. *Tare* (whose?, i.e. nobody's)-*kado* (gate, house)-*ya* (house, family). 2. *Tsubure-ya*.

In Iwashiro *kuni*, Shinobu *kori*, the permission of the feudal official is required. The amount is determined by a consultation of the relatives, but usually does not exceed one-third of the whole estate. In Aidzu *kori*, the permission of the local officials alone is enough. In villages, second and third sons usually succeed to the name and remaining property[1] of a "broken" farmer. When an advancement is made, the amount is in the discretion of the master.

In Rikuzen *kuni*, Toda *kori*, when property is to be apportioned to a second or third son, the procedure is the same as in the case of "private-extinction [of a family]," described in the chapter on Domicile.[2] There is no rule as to the proper portion, and if the heir objects to its amount, the father may not carry out his desire.

In Mutsu *kuni*, Tsugaru *kori*, the establishment of a branch family is not permitted unless the master has reached the age of 40 and the family estate performs a laboring service of 40 days' labor annually. The amount is in the discretion of the master.

In Uzen *kuni*, Tagawa *kori*, the amount is not fixed, but does not usually exceed one-third of the estate. A report is made to the chief headman and the entry in the land-register is changed, the ward or village officers certifying with their seals the transfer of the property. A farmer does not portion off a plot of less than 5 *koku* assessment. In Okitama *kori*, when a daughter or younger son is to be established in a branch-family, a consultation of the relatives and company is held, and an amount set off proportionate to the size of the family estate. Notice of this is given to the company-chief and the bailiff[3] at the time of revising the temple-register, on the 10th day of the 2d month. No document or witnesses are needed.

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1. *Myo* (name)-*seki* (residue). 2. See Part VII. See also *supra*, Chapter I, Rikuzen *kuni*, where a reference is made to the same procedure. 3. *Kendan*.

[illegible]

[illegible] Kamoin [illegible] [illegible] [illegible]

portions off the good-will of his business, as already described, but the relations of master and servant are in form preserved until the third generation of the new house.

In Kaga *kuni*, Ishikawa *kori*, a law of the fief forbids an advancement when the family estate is assessed at less 50 *koku*. When the owner of such an estate desires to make an advancement, he conceals the transaction under the name of a sale. However there is a general prohibition against sales and apportionments to temples, *samurai*, and merchants.

In Noto *kuni*, Hoshi *kori*, when a son or brother or other member of the family wishes to establish a new household, the master of the family informs the villagers, and consent being obtained, applies for permission to the feudal official by petition countersigned by the village officials. The new householder pays from 3 to 5 *yen* to the village as "face-money,"[1] which is laid by against extraordinary casualties or is applied to the village expenses. In Hagui *kori*, a portion may not be given to a younger son unless the estate is of 50 *koku* assessment or more.

In Echigo *kuni*, Koshi *kori*, in villages, no estate of less than 30 *koku* assessment can be subdivided; and so, although the master of a smaller estate sometimes, fo special reasons, establishes a second or third son at the head of a branch family, the headman, though not openly objecting, does not record the new house on the books. In towns, the master of a family usually apportions a part of his capital, seldom a part of the residence land. The amount is not fixed, but it rarely exceeds one-tenth of the whole. In Kariha *kori*, the s mallest estate allowed to b divided is one assessed at 10 *koku;* but as the local officials never report to the feudal official an increase in the number of

1. *Tsura-kane*. Prosperity or elevation of position is described by a common phrase, "His face has become better;" and the term "face-money" probably involves the same idea.

houses, the law is often violated. The amount of the apportionment is not fixed. In Kambara *gun*, the portion for a daughter or a younger son must not exceed one-fifth of the whole estate. If it consists of land, a petition asking permission to transfer must be sent to the ward representative, with the title-deed; the deed is copied at the ward assembly office, officially sealed, and forwarded to the elder and headman, who indorse it and deliver it to the head of the new family. This ward-assembly office manages the affairs of the ward, and the ward-representative, elder, and headman are to be found there.

In Sado *kuni*, Sawata *kori*, a law prohibits any change in the number of houses, so that the creation of branch families is not allowable, and it is customary for a younger son to wait for the removal of some family and take its place. The amount of the advancement, after a consultation by the relatives, is usually referred to the local officials for final determination.

SANINDO. In Tamba *kuni*, Taki *kori*, estates assessed at less than 10 *koku* may not be subdivided; in all cases permission of the feudal official is required. The house of the new family may be covered with straw-thatch only, not with reed-thatch or with tiles.

In Tango *kuni*, Kasa *kori*, a report must be made. In some villages an increase of the number of houses is not considered desirable, so that even though a branch-family be established, the name is recorded with that of the main family, until an opportunity arises to succeed to the name and remaining property of some extinct family. In towns, apportionments by merchants are rare, and most of the new families build up their business by their own efforts.

In Hoki *kuni*, Aimi *kori*, no report of the new family is necessary, and for the adv ment the consent of the local officials only is enough. In t ns and villages alike the new family is for 3 years exempt from the various burdens and charges.

In Idzumo *kuni*, Naka *kori*, the apportionment of property to younger children by last will must be attested by the nearest relations.

In Iwami *kuni*, Shima *kori*, when a second or a third son is established in a branch family and when a daughter or a son marries into another family, a portion of the estate is given them. In case of distribution made by will, the will must be opened in the presence of the relatives, the company and the beneficiary. If the latter alone opens it, the will is of no effect.

SANYODO. In Harima *kuni*, Shikito *kori*, in villages, a report of the apportionment is made to the local officials, and the entry is changed in the land-register. In towns, the permission of the feudal official is necessary. The amount is not fixed.

In Bigo *kuni*, Fukatsu *kori*, the establishment of a new family is reported to the local officials; if also a grant of part of the estate is made, the entry in the land-register is changed. The amount varies; but in no case must it be unsatisfactory to the heir-apparent, and it is generally about three-tenths of the whole. In Mitsuki *kori*, in towns, a report that a new family is established is given to the feudal official, together with a certificate from the temple which the master attends. In villages, there is merely a report to the local officials of the apportionment of property. The amount is in the discretion of the master.

In Aki *kuni*, Aki and Numata *kori*, in towns, a report of the new family is made to the local officials. The amount of capital portioned out is in the discretion of the master; but the saying "six to four" shows that the new family receives less than the successor to the main family. But where a son from a village family has been adopted into a town family, he must always succeed to the headship of the main family. A merchant sometimes gives to a faithful employee the right to use the house-name, as

already described, and a branch house so formed ranks second only to a branch-family established by a son or brother.

In Nagato *kuni*, Amu *kori*, a portion consisting of cultivated or forest land is given to the daughter or younger son who is to establish a branch family or to marry into another family. This is called "share-rice,"[1] and the amount is decided upon at the time the child is born. But sometimes the division takes place by will. The will is not valid unless it is opened by the relatives and company and read aloud in the hearing of all present.

NANKAIDO. In Kii *kuni*, Nakusa and Abe *kori*, in towns, an apportionment does not exceed one-third of the whole estate, and may not be made to any relative farther removed than a cousin: though, as already described, it may be made to a faithful employee, and in this case it is called "education grant."[2] In villages an advancement is made even to a brother or son, by the transaction called "return of the original amount,"[3] described in the chapter on Hypothec and Pledge. The amount is varying.

In Awa *kuni*, Miyoshi *kori*, as a rule, one who has but a small estate is not allowed to establish a son in a branch family, but if some necessity arises, the relatives and village officers investigate the matter, inspecting the land which it is desired to set off for the residence, and if no objection is made, the apportionment takes place.[4]

In Sanuki *kuni*, Naka *kori*, in towns, the amount of capital apportioned is in the discretion of the master. But when he apprehends disputes after his death, he seals up an instrument of bequest, and deposits it with the chief elder, who after his death opens it and announces the will of the deceased. In villages, a law prohibits any lessening of the

1. *Wake-mai*. 2. *Shitsuke-yuzuri*. 3. *Hosen-kaeshi*. See Part II. Chap. VI. 4. The hesitation to allow this would be due to the diminution of tax-producing rice-land caused by turning rice-land into residence-land.

cultivated area; so that a new house, if built on foundation stones and not merely by placing the timbers in holes,[1] cannot be erected without permission of the feudal official.

In Iyo *kuni*, Uwa *kori*, in towns, the amount of the portion is in the discretion of the master. The permission of the feudal official must be obtained. But in villages the consent of the local officials is enough. In Onsen *kori*, the permission of the feudal official is in all cases necessary. The amount is in the discretion of the master. In towns an increase in the number of families is considered undesirable; but in villages the opposite is the case, and the feudal official sometimes gives "house-money" to build the new house.

SAIKAIDO. In Chikuzen *kuni*, Sagara and Naka *kori*, there is a saying "seven to three," but the share apportioned seldom exceeds one-third of the whole. The additional family is registered at the revision of the temple-register.

In Chikugo *kuni*, Mitsuma *kori*, no distribution is made to daughters or younger sons except by will.

In Buzen *kuni*, Kiku *kori*, a report of the new family must be made to the local officials. Great honor is attached to having many branch-families. The amount of the portion is determined by the master, but seldom exceeds one-third of the estate. In towns a merchant often portions off a faithful employee, as already described, in the manner of a branch family; but the relation of master and servant is in form preserved. In villages also a master sometimes portions off a part of his estate to a domestic servant,[2] who makes a separate house, and is then called "name-child farmer."[3] He is bound to visit his patron's house on certain days for ever and to perform manual labor for him. The "original farmers"[4] do not treat him as an equal, and in fact regard

1. Because the latter structure would be of a temporary character, not enduring. 2. *Meshi* (order)-*tsukai* (employ). 3. *Na-ko-hyakusho*. Compare Chapter I, Osumi *kuni*. 4. *Hon* (true, original, principal)-*hyakusho*.

him as only next above the outcasts.[1] In Shimoge *kori*, in villages, the law forbids an advancement if the estate is of 10 *koku* assessment or less, but the local officials, in case of a violation, tacitly permit it, and the master of the new family reports at the next revision of the temple-register. In towns a branch family is established as a branch-business-house.[2] But for fear of the imposition of feudal charges no report is made until the new business is going successfully. In Usa *kori*, a branch family is said to be "within the stock,"[3] for, no matter how many are established, none are registered as having separate domiciles. A law forbids the apportionment of an estate less than 1½ *cho* in area; but the law is not needed, for no one would think of dividing a a smaller estate.

In Hizen *kuni*, Sonoki *kori*, no reports of the new family is made until the next revision of the temple-register; but the local officials are informed of the advancement at the time it is made. In villages it often happens that the older sons are established at the head of branch-families, while the youngest son[4] succeeds to the headship of the main family. In Takaku *kori*, the amount of the portion is in the discretion of the master. In villages it often happens, as above related, that the youngest son succeeds to the headship and the older sons start branch families. In Amakusa *kori*, an advancement is not permitted if the estate is of less than 10 *koku* assessment, but as in many cases the local officials on their own responsibility acquiesce in the breach of this rule, the practice is very confused.

In Hyuga *kuni*, Miyazaki and Kayu *kori*, no report is made, but every 2 or 3 years the local officials make an inspection and register the new masters in the temple-register. The amount of the advancement is determined by consultation of the master and the relatives.

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1. *Yeta*. 2. *De-mise*. 3. *Kabu* (family-stock, guild-share, etc.)-*uchi*. 4. *Batsu* (after, last)-*nan* (male, son).

In Osumi *kuni*, So *kori*, the permission of the feudal official is necessary before establishing a new family, and its master has an entry made entered in the temple-register. The amount of the advancement varies, but seldom exceeds one-third of the estate.

In Iki *kuni*, Shida *kori*, the portion consists of household utensils and a piece of residence-land, all cultivated land being reserved for the eldest son on succeeding to the headship of the main family. The master of the new family obtains from the village a share of the publicly-distributed land.[1]

In Tsushima *kuni*, Shimoagata *kori*, permission of the feudal official is required in creating a new family. The amount of the advancement varies.

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1. *Kobun no tahata*. See Chapter I, Iki *kuni*.

APPENDIX.

ALIENATION OF LAND IN RIKUZEN KUNI.[1]

Concerning Alienation.[2] In the feudal days the sale of land in this fief was not allowed. The object of this prohibition was the protection of the poor and the prevention of great accumulation of landed property by the rich. For the same reason the transfer of land by way of mortgage or of gift was prohibited, unless valid reasons existed. Severe as was the restriction, it was justified by the abuses which prevailed. The rich were constantly getting the land of the poor by way of security, though the transaction was veiled under some other name, and by means of these evasions of the law the poor became still poorer and it was impossible to relieve their distress. The following are some of the enactments passed. "No one may own more than 5 *kwammon's* worth of land, unless he can prove that he owned it before the passage of the law against alienation." (II. Gembun; 1737.) "Alienation of land is prohibited, except in the following cases, after investigation: (1) Where a man wishes to establish his younger brother as a farmer; (2) where a man has received a great deal of *sanden*[3] and is unable to cultivate it all himself; (3) Where a man's laborers have left him and he is unable to cultivate his land; in such a

1. This is extracted from the "History of Taxation in Sendai Fief," referred to in Part II, Appendix. 2. *Taka-wake, taka-bun.* 3. See Part II, Appendix.

case the feudal official will examine into the reasons for their leaving, and if it proves to have been by his own will and not through the inducements of others, the alienation will not be permitted; (4) where a man wishes to divide his residence-land into 2 or 4 parts and assign one or more to some relative who is to live there. Except for extraordinary reasons, no one may alienate his land other than as above." (XII, Kwansei, 1; Feb., 1800). "The regulations in regard to the alienation of land have recently been administered with much laxity, and hereafter they are to be strictly observed, the district-magistrate and the deputies and other officers examining the reasons carefully before permission is granted. Those who are entitled to alienate may alienate individual plots, but not an area measured by so and so many feet." (III Bunkwa 10; Nov., 1806). "When a mortgagor is unable to redeem, he may alienate his land to the creditor, retaining the portion not needed to satisfy the debt. But this will be permitted for the next two years only; and after that only in case of extraordinary need, to be determined by investigation." (III Bunkwa; 1809). "The regulations as to alienation have resulted in much land lying waste, since the poor are unable to cultivate them, owing to their lack of resources, and cannot sell them. The deputies, district-magistrate, inspectors, and headmen are to make an examination of these lands, and if it is really impossible for the owner to cultivate them, he may be allowed to sell or mortgage them. But great caution must be exercised in giving such permission, for it is easy to be deceived in such matters, and if such deceit comes to be practiced with impunity, transfers will increase, and finally the rich will become the owners of all the lands. Moreover, under no condition is an alienation by measurement to be permitted." (VI Bunkwa; 1809). "There has been and still is much land transferred by way of mortgage and private gift. The reason is to be found in the poor condition of the people, and especially in the famines of 5

[illegible]

(IX Tempo, 8 April 1939.)

1 *Tokamachi* 2 *Jinsaku*.

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